

GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

PUBLIC SERVICES COMMISSION

IN THE MATTER OF THE VIRGIN ISLANDS) VOLUME II OF III
WATER AND POWER AUTHORITY PETITION)
FOR ELECTRIC SYSTEM RATE RELIEF) PSC DOCKET NO. 678
_____)

EVIDENTIARY HEARING

Before: KYE WALKER, ESQ., Hearing Examiner

Date: October 23, 2019

Time: 9:35 a.m. - 5:21 p.m.

Location: Public Services Commission
Barbel Plaza
St. Thomas, Virgin Islands

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I-N-D-E-XPageLAWRENCE KUPFER

Continued Cross-Examination by Mr. Sprehn 6

Redirect Examination by Mr. Hall 22

Recross-Examination by Mr. Sprehn 46

Further Redirect Examination by Mr. Hall 64

AKEYLA CHRISTIAN

Direct Examination by Ms. Thomas-Griffith 84

Cross-Examination by Mr. Sprehn 98

HENRY THOMAS and MURRAY HAMILTON

Direct Examination by Mr. Hall 108

Cross-Examination by Mr. Sprehn 122

JAMSHED MADAN

Direct Examination by Mr. Sprehn 154

Cross-Examination by Mr. Hall 191

E-X-H-I-B-I-T-S

<u>WAPA'S</u>		<u>Page</u>
Z	September 2019 Vitol Payables	5
AA	WAPA Fuel Prices Graph	27
<u>HEARING</u>		
<u>EXAMINER'S</u>		
4	Excerpt From July 31, 2019, PSC Board Meeting Transcript Regarding Ratification of the Hearing Examiner	149
5	Excerpt From June 12, 2019, PSC Board Meeting Transcript Regarding Vitol Audit Discussion	149
<u>PSC'S</u>		
31	Vitol Contract and Amendments	56
32	Schedule of Liquefied Petroleum Project Facilities Infrastructure Costs Examination Report	191

P-R-O-C-E-E-D-I-N-G-S

HEARING EXAMINER: Good morning. We are now in day two of the Evidentiary Hearing. We left off with the PSC's cross-examination of Mr. Larry Kupfer.

As far as today is concerned, are there any objections to going up until 5:00 and then just breaking for 30 minutes until we start the public hearing?

MR. SPREHN: No.

HEARING EXAMINER: We will break for lunch of course, but we will go ahead until 5:00 p.m., and then just roll into the public hearing from there.

The floor is yours, Attorney Sprehn.

MR. HALL: Good morning, Attorney Walker. Before Mr. Sprehn begins, you had requested information yesterday regarding the Vitol payables. I would like to tender that at this point.

HEARING EXAMINER: This would be WAPA's Exhibit Z I believe.

(September 2019 Vitol Payables was marked as WAPA's Exhibit Z for identification.)

MR. SPREHN: In addition, as a follow-up on yesterday, the Hearing Examiner requested copies of certain orders related to past actions we think are relevant to the Vitol projects and the RFM and other transfers in the last

1 few years. Although we have not completed that survey, we
2 have gone through the years 2015, '16, and '17. We have
3 perused copies of those orders. We have copies for the
4 Hearing Examiner and WAPA. We present those to you.

5 HEARING EXAMINER: Okay, perfect. Thank you.

6 You have to arrange them, Ms. Hendricks?

7 MS. HENDRICKS: Yes.

8 MR. HALL: Let's go ahead and start the
9 cross-examination, and Ms. Hendricks will just distribute
10 them when she's finished arranging them.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. SPREHN:

13 MR. SPREHN: Good morning, Mr. Kupfer.

14 MR. KUPFER: Good morning, Attorney Sprehn.

15 MR. SPREHN: I want to follow up on a couple
16 of topics here. One is on the LEAC. In the proposal that
17 came forward for this rate increase hearing, there is also
18 a proposal to reduce the LEAC. Does that differ
19 substantially from the prior filing request for the LEAC
20 case?

21 MR. KUPFER: Well, right now you have a LEAC
22 petition before you, which I think it's a 2.57 percent
23 reduction in the fuel rate. Are you referring to the
24 filing for the next six month period?

25 MR. SPREHN: I'm referring to the earlier one

1 in the previous period where there is a request for
2 increase in the LEAC.

3 MR. KUPFER: We went back, and then based on
4 how the new Wartsila engines and the Aggreko engines were
5 running, we changed the dispatch. And, also, I believe the
6 pricing was a little bit lower; so that resulted in the
7 current LEAC submission that you have.

8 MR. SPREHN: Isn't that also a deferred fuel
9 amount that you -- more coffee needed this morning.
10 Apologize. Let me try that question again.

11 Isn't there also a deferred fuel balance on which WAPA
12 has decided not to seek recovery at the present time?

13 MR. KUPFER: It's in the petition. That is
14 something we need to continue to discuss. And to me it's
15 somewhat dependent on what happens, you know, to the base
16 rate petition. I am not willing to give up on the deferred
17 piece until I know what's happened on the among the base
18 rates.

19 MR. SPREHN: How much is that deferred piece?

20 MR. KUPFER: It's around 4 cents? Anybody
21 know?

22 3.87. I don't recall. And I don't recall the recover
23 period, over how many months it was. Maybe somebody can
24 refresh our memory.

25 MR. SPREHN: Can we just get a dollar amount

1 as to what the deferred balance is, just hard dollars?

2 MS. WILLIAMS: My name is Wendy Williams. As
3 of June 2019, the balance was about 28. -- maybe about
4 \$29 million, that's including CDL. Without the CDL it will
5 be about 83 million.

6 HEARING EXAMINER: I'm sorry, can you state
7 that figure again? As of June 2019 it's what? What's the
8 number?

9 MS. WILLIAMS: It was about \$29 million with
10 CDL; 83 million without CDL.

11 MR. SPREHN: For clarification on the record
12 in this proceeding, that discussion of with or without CDL,
13 CDL, the community-disaster-loan, was obtained in the
14 aftermath of Irma and Maria. A portion of that CDL was
15 used to pay fuel cost; is that correct?

16 MR. KUPFER: Yes.

17 MR. SPREHN: And because the CDL will be paid
18 out of base rate, the anticipation, those numbers have been
19 withdrawn from the LEAC, so it's not a double recovery; is
20 that correct?

21 MR. KUPFER: That's correct.

22 MR. SPREHN: Thank you.

23 Debt service coverage ratio, are you familiar with the
24 Public Services Commission's policy and orders on debt
25 service coverage prior to 2012?

1 MR. KUPFER: No.

2 MR. SPREHN: So you're not aware that the debt
3 service coverage ratio maintained by the Public Services
4 Commission for WAPA was at 1.75 times senior debt?

5 MR. KUPFER: No.

6 MR. SPREHN: What is WAPA's current debt
7 service coverage ratio on senior debt?

8 MR. KUPFER: I believe it's 1.25.

9 MR. SPREHN: What do your bond coverage
10 require, your bond commitments require?

11 MR. KUPFER: Is Ms. Gottlieb here?

12 Why don't you come up, Debra.

13 And, again, it's different for every class of debt.
14 So we need to go through those.

15 MR. SPREHN: I am only asking regarding senior
16 bond debt.

17 HEARING EXAMINER: I'm not sure, did we swear
18 you yesterday, Ms. Gottlieb?

19 MS. GOTTLIEB: Yes, you did.

20 Debra Gottlieb, Chief Financial Officer.

21 MR. SPREHN: The question was what is the
22 current bond covenant requirement for senior debt coverage?

23 MS. GOTTLIEB: I believe it's 1.75. We
24 usually do 1.5.

25 MR. SPREHN: And are you --

1 MR. KUPFER: I don't think that's consistent
2 with the e-mail we got from Roger Bagley yesterday.

3 MR. SPREHN: Is that an e-mail you can produce
4 today, by the lunch break?

5 MS. GOTTLIEB: Yes.

6 MR. SPREHN: The e-mail was from who?

7 MR. KUPFER: Roger Bagley, our bond counsel
8 with Hawkins Delafield & Wood.

9 MR. SPREHN: I will save further discussion on
10 that until we hear from Mr. Bagley.

11 HEARING EXAMINER: Can you produce it by
12 lunch?

13 MS. GOTTLIEB: Yes.

14 MR. SPREHN: There's been a --

15 MR. KUPFER: Murray Hamilton can also testify
16 to the coverage ratio.

17 MR. HAMILTON: Murray Hamilton, WAPA's utility
18 rate consultant.

19 125 percent net revenues compared to senior lien debt
20 is the minimum requirement for the bond resolution senior
21 debt.

22 MR. KUPFER: And that will be confirmed by
23 Mr. Bagley's e-mail, because that's what I remember reading
24 yesterday.

25 MR. SPREHN: Is there an exhibit in your

1 testimony or Mr. Bagley's testimony that details the
2 breakdown of WAPA's debt?

3 MR. KUPFER: I believe in the --
4 Murray, you can speak to that.

5 I believe in the detailed Excel spreadsheets that you
6 have there is detailed debt breakdown.

7 MR. HAMILTON: There are two exhibits.
8 Exhibit 8 is the senior and subordinated bonds, and then
9 Exhibit 9 is all the other general debt.

10 MR. SPREHN: Is that in your supplemental
11 testimony?

12 MR. HAMILTON: Yes, sir, as well as the
13 original.

14 MR. SPREHN: Just give us a moment while we
15 open that document up.

16 Do you need a copy of this?

17 HEARING EXAMINER: I have one. You're talking
18 about Exhibit 8?

19 MR. SPREHN: Exhibit 8.

20 Looking at Exhibit 8, which this is WAPA Exhibit --
21 excuse me, Exhibit WAPA-E-PRMG-8 is a four-page Projection
22 of Annual Debt Service Payments on Bonds.

23 I'm sorry, Exhibit 9 you said is the --

24 MR. HAMILTON: General fund debt.

25 MR. SPREHN: And does that break it down by

1 total amount or just by annual payments?

2 MR. HAMILTON: No, it has it broken out
3 between the interest on the credit line as well as the
4 Vitol infrastructure payments.

5 I'm sorry, it is the annual debt service payment,
6 principal and interest.

7 MR. SPREHN: Looking at Exhibit WAPA-E-PRMG-8,
8 I believe it says 8A, which is a two-page exhibit, a
9 Summary of Debt Service Sizing and Payments. I see a
10 line 1 as a Senior Series 2017-A BANs Wartsila 1 in a
11 amount of 14 million with a starting balance of 38 million.

12 Could you describe what that debt is?

13 MR. KUPFER: That's the only outstanding
14 Wartsila related debt currently is the \$15 million BAN that
15 was issued in 2017, and that is the 2017-A. That matures
16 July of next year.

17 MR. SPREHN: So by mature, the balance
18 entirely is due at that time?

19 MR. KUPFER: Yes, of \$15 million.

20 MR. SPREHN: There's a Series 2019-A BAN for
21 Wartsila also on the schedule in the amount of 20 million.
22 Is that outstanding at the present time?

23 MR. KUPFER: No. That's the completion
24 financing we need to do for the remaining amounts owed to
25 Wartsila.

1 MR. SPREHN: So at this point that's an --

2 MR. KUPFER: That's an anticipated financing,
3 which I referred to in my remarks.

4 MR. SPREHN: Existing debt, you do actually
5 owe the money on this?

6 MR. KUPFER: Right, we owe them. Yes, this
7 will be a payable.

8 MR. SPREHN: There is also scheduled four
9 other items that are simply identified as other with
10 amounts in the range of -- these are lines 3 through 6. In
11 the amounts of 35 to 29 million dollars. What are those
12 debts?

13 MR. HAMILTON: I think we are looking at the
14 schedule wrong. There are no amounts in that column.

15 MR. SPREHN: There is a --

16 MR. HAMILTON: To the right is the
17 amortization schedule of how the 38 million gets repaid
18 back.

19 MR. SPREHN: 38 billion --

20 MR. HAMILTON: 38 million on line 17,
21 38.63 million is the total estimated issuance, which runs
22 up to that first line item there where it says "Fiscal Year
23 '21," you see the starting balance 38 million, principal
24 and interest payments, total payment to the right, ending
25 balance at the end of that first year, 37.1 million. And

1 so that's an amortization schedule in the far right-hand
2 column of this worksheet.

3 MR. SPREHN: So in effect --

4 MR. HAMILTON: Until that amount is paid off
5 in 2035.

6 MR. SPREHN: This is an amortization schedule
7 for the Wartsila payments including anticipated debt?

8 MR. HAMILTON: Yes.

9 MR. SPREHN: Over the next 15 years?

10 MR. HAMILTON: 15 years, yes.

11 MR. SPREHN: And it only includes that one
12 item?

13 MR. HAMILTON: Right. And none of which are
14 payments due in our test year.

15 MR. SPREHN: And then the next section down
16 beginning with line 33 is the Series C BANs. These are
17 2018-B BANs for street lighting. And I see a reference to
18 2020-C bonds. Is that in anticipation that bonds will be
19 issued in 2020?

20 MR. KUPFER: Yes, that the BANs would be
21 converted to bonds next year, July of next year.

22 MR. SPREHN: Given WAPA's current credit the
23 rating, how likely is it that WAPA will be able to issue
24 bonds --

25 MR. KUPFER: If we get the rate increase, the

1 base rate petition we are looking for, very likely. We are
2 already talking to investors now about these transactions.

3 MR. SPREHN: Are these the only two planned
4 bond issuances WAPA has on its schedule for the next
5 several years?

6 MR. KUPFER: Well, we need to deal with the
7 Community Disaster Loan BAN as well, and I believe that may
8 be --

9 When does that BAN mature, Murray?

10 MR. HAMILTON: The CDL loan?

11 MR. KUPFER: CDL, yeah. Is that '21 or '22?

12 MR. HAMILTON: I believe it was '22.

13 It is not in our forecast period. I don't have the
14 detail, but I believe it was '21 or '22. That would have
15 appeared on Schedule 9 -- Exhibit 9, because that's an
16 inner-fund loan due to the water system. The water
17 system's net revenues are actually --

18 MR. KUPFER: But we do have a \$17 million BAN
19 that's on electric. We'll have to get to the maturity of
20 that. But it's I thought '22, but it could be further out.

21 MR. SPREHN: On page 2 of Exhibit A, you also
22 have a proposed senior bonds in the amount of 6 1/2
23 million. What is the purpose of that funding?

24 MR. HAMILTON: That bond was actually removed
25 in the adjustments we discussed yesterday. In pulling out

1 all the capital funded projects, as well as the debt
2 adjustments that we reviewed yesterday, that estimate was
3 actually eliminated on the Schedule 2.

4 But it would have been used to fund capital projects
5 in the capital plan.

6 MR. SPREHN: Has WAPA -- been much discussed
7 lately that WAPA has a total of about 1.2 in liability
8 debts. Leaving aside the 3. -- the 330 billion related to
9 pension, that leaves an outstanding debts and liability in
10 the neighborhood of 900 million.

11 Does WAPA have a comprehensive plan to address the pay
12 back, pay off of that debt?

13 MR. KUPFER: I'd like to see the schedule that
14 supports the 900. Can we look at that? You have something
15 you're looking at you can share?

16 MR. SPREHN: Actually, it's dockets that's
17 been provided to the PSC in the past that stated that. I
18 am sure I can find one for you if you want to wait.

19 HEARING EXAMINER: Can you make a copy for me
20 as well, so I can follow along.

21 MR. SPREHN: Let's get back to that when we
22 get closer to a break so I don't waste our time.

23 HEARING EXAMINER: That's fine.

24 MR. SPREHN: Management audit, have the
25 recommendations of the management audit all been

1 implemented?

2 MR. KUPFER: We have a schedule that we
3 submitted I'd like to review. I believe it's schedule, is
4 it L or -- if we could refer to that.

5 MR. SPREHN: Please. Please do so.

6 MR. KUPFER: It's Exhibit U in what we
7 submitted.

8 MR. SPREHN: It has an exhibit tab on it?

9 MR. KUPFER: U.

10 HEARING EXAMINER: Exhibit U.

11 MR. KUPFER: We completed -- to answer your
12 question, no, but I'd like to -- this takes us through what
13 the status of that is and why the answer --

14 MR. SPREHN: Can I ask you to hold for just a
15 moment.

16 I'm sorry, please continue.

17 MR. KUPFER: No is the answer to your
18 question, and this will explain why. The Authority
19 completed a management audit in February of 2015. The key
20 findings were for the Authority to prepare a strategic plan
21 and integrated resource plan. Both of those were completed
22 in 2016.

23 The management audit identified potential savings,
24 which I've laid out on the table. The management audit
25 called for upgrading our generators with this new style

1 smaller, much more efficient renewal compatible generators
2 using propane. And they identified savings of range of 32
3 to say 50 million dollars. Our IRP that we completed in
4 2016 confirmed that recommendation of the management audit.
5 And we are in the process of completing that transformation
6 of our generation.

7 And as I put in our remarks, today 50 percent of our
8 power in St. Thomas is being generated by those types of
9 engines, and 65 percent of our power in St. Croix is being
10 generated by those types of engines. And our
11 transformation plan calls for completing those upgrades at
12 both of those power plants using HUD funds. So that work
13 is still ongoing. And we agree 100 percent with the
14 findings of the management audit.

15 Then they identified in the management audit other
16 savings of 6 to 10 million dollars primarily through
17 staffing reductions and -- again, primarily staffing
18 reductions.

19 In the table at the bottom, the management audit when
20 it was prepared, WAPA had close to 700 positions. In
21 January of this year that was down to 527 positions. And
22 we believe that saved roughly \$6 million in salaries and
23 expenses, which is in line with the savings that were
24 identified in the management audit. So all the
25 recommendations that the management audit included, that we

1 accepted were implemented. Was that everything? No, but
2 it was the majority of them were. And you could see we've
3 had substantial head count reduction since that time that
4 have resulted in savings that are in line with the
5 management audit.

6 MR. SPREHN: I guess following up with the
7 easy question, are those positions permanently eliminated
8 or are they open slots?

9 MR. KUPFER: In our mind they are all
10 permanently eliminated. We have -- we are -- every time we
11 have a vacancy, we look at whether we are going to fill
12 that or not. But the positions listed here, we are never
13 going to get back anywhere near 700. I don't see us
14 getting anywhere near 575 in terms of head count. No,
15 these are permanent -- this is the new permanent future for
16 WAPA.

17 And I am also going to recommend -- I'm looking for
18 funding. This management audit was completed in 2015. I
19 think it's time to do another one. I'm going to approach
20 Department of Interior to see if they might have grant
21 funding, so that would allow us to do that. And so I am in
22 the process of reaching out to Basil Ottley to see if they
23 might have some funding to do this.

24 I think it's time. It's post-storm. We've identified
25 the transformation plan and what the new WAPA would look

1 like; so it's time we take another look at our
2 organizational structure. And, again, that's something the
3 Authority needs to be continually doing, and it's the best
4 practice of companies to always be looking at itself based
5 on current conditions.

6 MR. SPREHN: Based on the transformation plan,
7 you commented about on St. Croix you have more than
8 50 percent of your generation on the newer efficient units.
9 That is the leased Aggreko units; is that correct?

10 MR. KUPFER: Yes. 20 megawatts out of
11 approximately 32 megawatt load, average load, yes. Around
12 65 percent is what I said.

13 MR. SPREHN: Is there a date for the
14 replacement of the balance of the older generation on
15 St. Croix?

16 MR. KUPFER: That would be determined with the
17 IRP that we are developing. The IRP may recommend some
18 additional leased generation in the short term to eliminate
19 our reliance on those older generators, but we need to see
20 the new IRP.

21 MR. SPREHN: When is that IRP due?

22 MR. KUPFER: We are hoping to see a draft of
23 the report the end of this month. Clinton could give us an
24 update, but that is the schedule.

25 MR. SPREHN: How long has that IRP been

1 underway?

2 MR. KUPFER: Officially only the last few
3 months. We had funding issues, and finally
4 Department of Interior came through with a grant to do that
5 work.

6 MR. SPREHN: And how much was that grant?

7 MR. KUPFER: I'm going to have to get you the
8 exact numbers. It was under \$500,000, but I don't remember
9 the specific amounts.

10 MR. SPREHN: That's sufficient for our
11 purposes, under \$500,000.

12 MR. KUPFER: And it covered a couple projects,
13 the IRP and also some other work they were doing.

14 MR. SPREHN: We're having copies made for the
15 document. We will have those in here shortly.

16 HEARING EXAMINER: No problem.

17 MR. SPREHN: And with that I think we will
18 conclude Mr. Kupfer. We are ready to move to Mr. Thomas
19 and Mr. Hamilton.

20 MR. HALL: I have a few questions.

21 HEARING EXAMINER: Sure.

22 MR. KUPFER: The FEMA CDL that's on electric
23 is July 1, '21, when that -- July 1, '21, is when that
24 electric system CDL BAN, which is around \$17 million, when
25 it comes due.

REDIRECT EXAMINATION

BY MR. HALL:

MR. HALL: Mr. Kupfer, you were questioned about two Vitol projects. And I'm not sure the record is clear, the full context on the record. Let me start with Exhibits I and J.

MR. KUPFER: Uh-huh.

MR. HALL: There's a reference there to two letter agreements. Can you explain why WAPA entered into letter agreements with Vitol when it had a contract with Vitol?

MR. KUPFER: The contract -- they issued us a notice of default for the contract and offered a cure that was a 20 million lump sum payment, staying current on all -- well, first staying current on all payments, which are for fuel, infrastructure, and O&M; a \$20 million lump sum payment; and then a what I'm going to call an arrearage payment of -- the original proposal was two and a half million dollars a month to continually pull down the outstanding balances.

MR. HALL: Let me just ask you to remind us what the balances were that were owed to Vitol?

MR. KUPFER: At year end this year, 2018 was approximately \$100 million.

MR. HALL: \$100 million related to what?

1 MR. KUPFER: About \$37 million for fuel,
2 operation and maintenance, and a delay charge; and then the
3 balance of about 6 -- 53 million -- 63 million for
4 infrastructure.

5 MR. HALL: With regard to the infrastructure
6 amount, did the PSC ever conduct a prudence determination
7 to determine whether the infrastructure payments was
8 correct?

9 MR. KUPFER: Not that I'd ever seen, no.

10 MR. HALL: Was there ever any question about
11 the prudence of the O&M charges decided by the Commission?

12 MR. KUPFER: No. To me the infrastructure
13 charges are separate from O&M. The O&M contract was clear
14 that the O&M charges would adjust every year, based on the
15 negotiations between Vitol and the Authority on what those
16 would be. It's intended just to cover their operating
17 expenses at both of the facilities in St. Croix and
18 St. Thomas. And I don't believe the original contract even
19 had an original O&M amount. That was to be negotiated by
20 the parties as the start-up date approached.

21 So, again, those to me are two different things. The
22 infrastructure cost and the operation and maintenance are
23 two distinct, and one clearly was undefined and meant to
24 adjust every year based on negotiations between the
25 parties.

1 MR. HALL: And has it adjusted every year?

2 MR. KUPFER: I believe so but I haven't seen
3 -- I don't recall the exact numbers.

4 I don't know if Akeyla or Joan, has the O&M charge
5 changed from year to year?

6 MS. CHRISTIAN: Akeyla Christian. It
7 initially was \$5 million, and the amount changes every
8 October of every year. I think the most recent numbers
9 that I saw was 8 million and change.

10 MR. HALL: Let me ask the witness to refer to
11 Exhibit M, as in Mary.

12 MR. KUPFER: Uh-huh.

13 MR. HALL: Directing your attention to that
14 exhibit, Mr. Kupfer, does that document shed any light on
15 whether the O&M changes on an annual basis?

16 MR. KUPFER: I think it's better to go to F.
17 F we agreed -- or maybe E. I'm missing F.

18 MR. HALL: F is projected revenues and
19 expenses.

20 MR. KUPFER: That's the one that was included
21 in my remarks.

22 I have it here in my testimony. That table we just
23 referred to is an older version of that table. So I'm
24 looking at that. That's Table 1 from my remarks yesterday.

25 MR. SPREHN: It's Exhibit M.

1 MR. HALL: And what does that exhibit indicate
2 to you?

3 MR. KUPFER: Column A is what was submitted
4 and approved in the last rate case based on fiscal year
5 2019 test year. And Column B is the supplemental filing
6 based on test year fiscal year 2020.

7 MR. HALL: And the difference reflects what?

8 MR. KUPFER: On line 11 for Vitol, the current
9 contract, which is a ten-year amortization of the
10 \$160 million current contract value at \$31.2 million a
11 year. Line 12 is the operating and maintenance fee, which
12 is currently at \$8.7 million, and it is due to be reset
13 shortly; but that's the amount that varies from year to
14 year based on negotiations between the parties.

15 MR. HALL: Now, am I correct that prior to
16 working for the Water and Power Authority you were with
17 HOVENSA?

18 MR. KUPFER: Correct.

19 MR. HALL: Were you employed at HOVENSA when
20 it closed?

21 MR. KUPFER: No, I left three years prior to
22 its closing.

23 MR. HALL: Are you familiar with the cost of
24 fuel that the Authority obtained from HOVENSA under a
25 special agreement?

1 MR. KUPFER: Yes. Yes, very familiar.

2 MR. HALL: Can you tell us what that cost was?

3 MR. KUPFER: Sure. Under the agreements
4 between HOVENSA and the Virgin Islands Government, HOVENSA
5 was obligated to sell fuel oil to the Authority at its
6 landed cost of low sulfur crude that it purchased every
7 month.

8 And people need to understand why that was such a true
9 discount, is that the WAPA -- HOVENSA was buying low sulfur
10 crude oil in parcel size of a million to two million
11 barrels directly from producers either in West Africa or
12 the North Sea. So they were buying very, very large
13 volumes of low sulfur crude and having it delivered to the
14 territory. There was no middleman involved. They were
15 dealing directly with the producers of the crude oil. And
16 because they were using very large ships to deliver that
17 crude and because very short voyages from the North Sea and
18 Africa, the transportation rates were fairly low, in
19 probably \$1.50 to \$2 a barrel range.

20 So to be able -- for the Authority to be able to buy
21 fuel basically in two million barrel -- based on two
22 million barrel lots, when they are really only buying it at
23 10,000 barrel lots, based on very good shipping economics,
24 because based on VLCCs and long-range carriers, so it's a
25 very low delivered price.

1 And if you look at the value of what we sold the 2 oil
2 for versus the market price, it was typically a 40 to
3 50 percent discount off of what HOVENSA could have sold
4 that crude oil for. So when the refinery closed, you know,
5 the Authority lost that discount, which was, as I said, a
6 substantial discount.

7 MR. HALL: Did you prepare a graph that
8 depicts what the price of the HOVENSA fuel was related
9 to --

10 MR. KUPFER: Yes.

11 MR. HALL: -- as compared to what the market
12 price is?

13 MR. KUPFER: Yes.

14 MR. HALL: As compared to the price of propane
15 from Vitol?

16 MR. KUPFER: Yes.

17 HEARING EXAMINER: Which exhibit?

18 MR. HALL: This is a new exhibit, AA.

19 (WAPA Fuel Prices Graph was marked as WAPA's
20 Exhibit AA for identification.)

21 MR. SPREHN: What are you marking this?

22 HEARING EXAMINER: It's AA.

23 MR. HALL: AA.

24 I want to direct your attention, Mr. Kupfer, to
25 Exhibit AA and ask you who prepared this?

1 MR. KUPFER: I did based on available pricing
2 from the Department of Energy and their energy information
3 -- agency, and based on our contract price for 2 oil and
4 propane and what had been the HOVENSA kind of discounted
5 price.

6 MR. HALL: Would you tell us what this graph
7 depicts.

8 MR. KUPFER: So this shows basically the
9 price, the market price of 2 oil delivered into WAPA.

10 MR. HALL: Which line is that?

11 MR. KUPFER: That's the top orange line that's
12 labeled "2 Oil Price."

13 Then I will jump to the gray line, which is labeled
14 the "Propane Price," and that's the, per our contract with
15 Vitol, the propane price delivered into the Authority. The
16 blue line is the HOVENSA discounted price, which is based
17 on a low sulfur crude oil indices.

18 And it shows pricing from 2012 up to the present time,
19 2019. 2012 is when the HOVENSA refinery closed. And so
20 this was intended to show, if HOVENSA had stayed in
21 operation, what the price of 2 oil could have potentially
22 been to the Authority.

23 Then I noted two main points, number one, based on
24 2012 to 2019 prices, the market price of 2 oil was
25 47 percent higher than HOVENSA's discounted fuel price.

1 Over the same time frame, the market price of propane was
2 2 percent higher than HOVENSA's discounted fuel price. So,
3 one, you can see obviously the tremendous discount that the
4 Authority was getting by buying from HOVENSA, and you can
5 see the benefits that propane is delivering to the
6 Authority, because its price follows very closely what that
7 HOVENSA price had been. Obviously there is volatility in
8 all pricing.

9 You can see the orange line and the blue line
10 basically are in lock step because 2 oil is very highly
11 correlated with crude prices. Propane is not as much
12 correlated, and that's why sometimes you can see propane is
13 under crude oil; sometimes it's over crude oil. You can
14 see just recently it flipped to being back under the price
15 of crude oil. But it still is a tremendous advantage
16 versus a 2 oil, and again matches very closely what we were
17 -- the Authority was paying to HOVENSA for fuel oil.

18 MR. HALL: In 2012 when HOVENSA closed, was
19 Vitol supplying propane to the utility?

20 MR. KUPFER: No. We signed the contract with
21 Vitol in July 2013. And, again, the impetus to get into
22 propane as an alternate slide was because HOVENSA was
23 closed, and the Authority knew it needed to get away from
24 market based 2 oil and into a lower priced fuel.

25 MR. HALL: And when did Vitol come on line?

1 MR. KUPFER: The Vitol project finished up
2 basically at the end of 2017. I think we said yesterday
3 that St. Croix was declared mechanically complete in
4 November and maybe St. Thomas -- November of '16, and
5 St. Thomas January of '17.

6 MR. HALL: So what price did WAPA pay for fuel
7 prior to Vitol coming on line?

8 MR. KUPFER: Would have been that orange line.
9 Would have been the 2 oil price.

10 MR. HALL: And if WAPA had waited, done the
11 engineering work that it didn't do in an interest to
12 getting the project on line, what price of fuel would it
13 have paid if it had to wait the two years?

14 MR. KUPFER: That would have delayed the start
15 of the propane potentially another two years, and then of
16 course you had the hurricane, so it's sort of difficult to
17 say what would have happened. It certainly would have
18 pushed the dates beyond year end kinda '16 to complete
19 those projects.

20 MR. HALL: I'd like you next, Mr. Kupfer, to
21 refer to Exhibit N.

22 MR. KUPFER: Okay.

23 MR. HALL: And ask you whether you are
24 familiar with this exhibit?

25 MR. KUPFER: Yes.

1 MR. HALL: And can you tell us what this
2 exhibit depicts?

3 MR. KUPFER: This exhibit calculates the
4 impact of not having propane on the LEAC cost of the
5 Authority. So the left-hand side is an approximation for
6 what our current LEAC submission is, which is approximately
7 based on 80 percent propane, 20 percent 2 oil. And the
8 last line you can see that the fuel cost is a little over
9 16 cents a kilowatt hour, which is very close to the --
10 what we have submitted as our LEAC.

11 The columns to the right show the impact of not having
12 propane. And you can see in that case a couple key things
13 to point out is the Wartsila units, which are the most
14 efficient units we have only burn propane; so those are not
15 available to us. And we would then have to go to basically
16 a hundred percent utilization of our APR rental units
17 because they have the best heat rate outside of the
18 remaining generators that can burn 2 oil.

19 In Richmond the Aggreko units, which are the most
20 efficient units in Richmond, cannot burn 2 oil. They can
21 only burn propane; so they are unavailable to us. And we
22 would have to use our existing or three other existing
23 turbines, either 17, 19 or 20, burning only 2 oil at a very
24 high heat rate.

25 You can see the LEAC cost jumps to .2998, and that's

1 why I indicated in my testimony that the current LEAC is
2 19 cents, and it would jump to 30 cents based on these
3 calculations here. Subsequent to preparing this, we have
4 completed the actual LEAC file for the case where we didn't
5 have propane, and I believe that's showing a LEAC fuel cost
6 of .2922. So the schedule here is a very close
7 approximation of what potentially will be in the LEAC
8 filing for a propane only scenario.

9 MR. HALL: So is it fair to say that this
10 exhibit shows the consequence of not getting the base rate
11 increase that will allow the utility to satisfy its
12 contract with Vitol?

13 MR. KUPFER: Yes. And I think it needs to be
14 added, because obviously in a 2 oil only case, where we are
15 buying 2 oil from Glencore as the sole supplier, and we are
16 already at, at times, their max credit limit, and they
17 don't discharge the ships unless we pay, there could be
18 times we don't have sufficient funds to pay them, because
19 the buy-ins have increased significantly with them being
20 the only supplier. But, yes, this shows what the impact on
21 LEAC would be.

22 MR. HALL: What would be the impact on the
23 ratepayer if the rate relief is denied?

24 MR. KUPFER: There is a couple of different
25 ways to look at that. The LEAC would go up by 14 cents a

1 kilowatt hour. Basically we're paying Vitol in
2 infrastructure and O&M about \$39 million a year, which is a
3 little -- it's about 7.6 cents in fees. So if you net the
4 plus 14 and the minus 7.6, that means the customer would
5 see an overall 6 cents increase in rates.

6 MR. HALL: You indicated in your opening
7 statement that you were sympathetic to the ratepayers.
8 Have you thought about the consequence on residents and
9 businesses with this kind of increase?

10 MR. KUPFER: I've lived here in the territory
11 20 years, through the times when our power price was up at
12 54 cents a kilowatt hour. I saw businesses that closed,
13 particularly businesses that had to run their air
14 conditions, restaurants, beauty supply stores, that they
15 just couldn't stay in business at that kind of price. And
16 so, you know, I do not and nobody at the Authority wants to
17 see, you know, these sort of prices in place. It's just
18 that with the impacts of the hurricanes on our demand and
19 still being susceptible to swings in commodity prices, this
20 is the reality we are currently facing.

21 I showed in this yesterday -- again, looking at WAPA's
22 expense for personnel costs, that's salaries of our
23 employees, maintenance repairs, and other operating
24 expenses, those are in line with expenses from three years
25 ago. So it isn't like the Authority is out just spending

1 money on itself willy-nilly. The real increase, as where I
2 described yesterday, is additional lease generation, which
3 everybody in this room has agreed to install. And those
4 new generators have saved the Authority fuel. They are
5 much more efficient than what we have, but they cost more
6 money to operate.

7 Vitol, I discussed why it's up, 2.1 on infrastructure,
8 3.7 on O&M; and then debt service, which is not real new
9 debt. This is debt that's been in existence, is up by
10 4.4 million. So those are the driving forces that are
11 saying we need to adjust our base rates so we now have
12 rates that we can take to lenders and refinance, you know,
13 the projects we just talked about, which is the Wartsila,
14 the streetlight BANs next year, and eventually the CDL BANs
15 need to be refinanced as well. Hopefully they can be
16 forgiven.

17 But they're all coming due, and without base rates to
18 support the financing, they likely will not be able to
19 happen. Which means for Wartsila, if we don't complete
20 that financing by the end of the year, we have a
21 forbearance agreement with Wartsila that runs to the end of
22 the year, and if we haven't paid them what we owe, they
23 would likely shut the generators down and say you're not --
24 you can't run these until you pay me what you owe me.

25 MR. HALL: Does any of that keep you up at

1 night?

2 MR. KUPFER: Yeah, that's the thing that keeps
3 me up the most at night.

4 I met with Governor-Elect Bryan in December of last
5 year, and I had a single piece of paper, and I said, These
6 are the four things that keep me up at night. Number one
7 on the list is that our rates are already very high, but
8 they are not sufficient to cover all of our expenses.

9 Vitol was on the list because if I knew the potential
10 impact of not having propane, of what the impact would be
11 on the Authority.

12 The third item on the list was wanting to work with
13 the governor to get a larger share of the HUD money that's
14 been allocated between Puerto Rico and the
15 U.S. Virgin Islands. We feel very strongly, Governor Mapp
16 felt very strongly, and Governor Bryan feels very strongly
17 that we need more of that allocation to do the
18 transformation type projects that I discussed yesterday.

19 So those were the things on my list that I said keep
20 me up at night, and they are all still on my list. Nothing
21 has changed in the 10 or 11 months that I shared that list
22 with him.

23 MR. HALL: If the rate increase is granted,
24 what do you foresee in terms of the generation outlook, the
25 ability of the utility to remain viable?

1 MR. KUPFER: As I laid out in my remarks
2 yesterday, I believe that in order to execute our
3 transformation plan, we need to stabilize the financials of
4 the Authority. If we don't, we're going to have trouble
5 attracting bidders, because they are not going to want to
6 enter into a contract with an entity that maybe wouldn't be
7 in existence or maybe it would be under receivership in
8 some amount of time.

9 The federal government as well, they want to make sure
10 that the entities they're dealing with have the capacity to
11 manage these grants. And like I said, we get contacted --
12 every time there is a negative news article, we get
13 contacted by FEMA and Treasury and asked what's going on.

14 And if things continue to be, you know, a struggle for
15 the Authority, I think they are going to take a hard look
16 at giving us additional funds or potentially even
17 curtailing some of the funds that has been allocated to the
18 Authority.

19 MR. HALL: Thank you. I have no more
20 questions.

21 HEARING EXAMINER: Mr. Kupfer, during the
22 public hearing in St. John last night, one of the five
23 testifiers who gave statements in response to WAPA's
24 strategy with regards to the base rate increase or
25 potential base rate increase wherein WAPA states that there

1 would be also a somewhat comparable reduction in the LEAC.
2 The concern of the testifier was that the LEAC was
3 temporary but the base rate increase was permanent.

4 Does WAPA have any strategies that would result in a
5 reduction of the base rate whether in 2020, 2021, if this
6 base rate was for 2021 I guess --

7 MR. KUPFER: Yes, our strategies will reduce
8 both the base rate and the LEAC going forward. I mentioned
9 the 40 megawatts of new generation we have coming into
10 St. Thomas. When we get those generators installed, we
11 will be able to release the APR generators that we have.
12 And those are -- in terms of base rates, those are a couple
13 cents per kilowatt hour, that would come out.

14 Additionally, as we discussed, refinancing of the
15 Vitol, a step one with the private entity would take a
16 couple cents a kilowatt hours out of the base rate.
17 Long-term and we will see the results of the IRP, we want
18 to get rid of the lease generators in St. Croix. And they
19 are another couple cents a kilowatt hour that will be
20 coming out.

21 So then in terms of LEAC, we are going to see
22 reductions when the new generators get installed, because
23 they will be much more efficient than what we have, and
24 they will be using propane. And we will be installing
25 additional solar facilities in the next year and a half;

1 and so those will be reducing LEAC. So both the LEAC and
2 the base rates will be coming down because of the projects
3 I talked about in the transformation plan.

4 HEARING EXAMINER: And what is WAPA's
5 estimated reduction in the LEAC and base rate, what is the
6 estimated time frame for that?

7 MR. KUPFER: What we've -- in the
8 transformation plan we believe we can refinance Vitol -- by
9 the end of next year, we believe we can -- with base rates,
10 we believe we can refinance Vitol; that's 2 cents. We can
11 get rid of the -- that's the -- Vitol would be a couple
12 cents. We can install the new Wartsilas and get rid of the
13 APR generators; that's 5 cents in our current plan. So
14 that's the 7 cents I kind of referred to in here. And then
15 the renewable projects will add another couple of cents.
16 So we believe 9 cents could come out by the end of next
17 year with these transformation projects in place.

18 And then subsequent to that would be the upgrade of
19 the St. Croix plant and more renewables here in St. Thomas
20 and also in St. John.

21 HEARING EXAMINER: And with the upgrades to
22 the St. Croix plant and the new renewables, what is the
23 estimated additional reduction in the base rate, and when
24 would that reduction --

25 MR. KUPFER: That would be dependent on a

1 couple things, the IRP, which we are producing, and we need
2 more grant funding from the HUD. So the projects I just
3 described to you probably exhaust the \$200 million that we
4 have from HUD. Although that changes a little bit every
5 day, because now we have recently received approval to do
6 the 10 megawatt solar farm in St. Croix at the airport
7 using FEMA funds where originally we thought it might be
8 HUD. So that's going to save some HUD money.

9 So beyond next year we need to work with the Office of
10 the Governor, the Office of Disaster Recovery to figure out
11 and looking at our IRP is what are those next steps and
12 what should we focus on first.

13 HEARING EXAMINER: With regards to the
14 anticipated 9 cents reduction by the end of 2020, is WAPA
15 certain enough of that projected reduction that it makes a
16 potential base rate increase of the 6 cents that you are
17 requesting now? Well, let me rephrase that.

18 With the potential base rate increase of 6 cents now
19 and your plans and your projections, is WAPA confident
20 enough to say that the base rate increase that's currently
21 requested need only be in place until the end of 2020?

22 MR. KUPFER: Yes. And what we ought to do,
23 and I proposed this, as soon as we refinance Vitol, we
24 ought to have an immediate adjustment to the base rate. It
25 doesn't have to wait til the end of next year.

1 And, again, any of these projects, once they get
2 implemented -- we have this crazy long base rate process
3 where we submit a petition, and we hold hearings, and eight
4 or nine months later, something happens. It doesn't need,
5 in my opinion, to be that long. I would say with Vitol, as
6 soon as we have it refinanced, we ought to then submit a
7 petition to the PSC and say it's been refinanced, these are
8 the new payments, this is the impact on base rates; let's
9 take it out of base rates.

10 HEARING EXAMINER: How quickly can Vitol be
11 refinanced assuming you receive the base rate increase?

12 MR. KUPFER: We are talking to people now. I
13 would think by the middle of next year, if we had base
14 rates by the end of this year, we will be able to refinance
15 the Vitol facility.

16 HEARING EXAMINER: And that anticipated saving
17 with the refinance of the Vitol would be how many cents?

18 MR. KUPFER: I think 1.8 cents is our current
19 estimate. But, again, that's an estimate. We don't know
20 what the value of what the purchase could be, but I'll
21 nominally call it 1.8 cents.

22 HEARING EXAMINER: And if WAPA were to receive
23 a base rate increase of the 6 cents that it's requesting up
24 until the end of 2020 only, would that give your potential
25 investors enough confidence to continue to engage in the

1 transactions that you're currently --

2 MR. KUPFER: No. To me it needs to be a
3 permanent rate, because that's what financiers want to see.
4 They know that rates can be changed any time. They
5 understand that, but it needs to be a permanent, what's
6 referred to as a permanent base rate and not one that's
7 temporary or only in for a short amount of time. That's
8 just the reality of these lenders; it needs to be a
9 permanent increase.

10 HEARING EXAMINER: Right. Now, in light of
11 the confidence that WAPA has that it can make the
12 adjustments to its operations to allow for a 9 cents
13 decrease by the end of 2020, and in light of what you just
14 said that the base rate has to be treated as a permanent
15 base rate increase to -- so that your investors can have
16 confidence enough to continue these transactions with you,
17 does WAPA have any plans, should it receive the base rate
18 increase, to then request a reduction at the end of 2020?

19 MR. KUPFER: Yeah. We are in -- anytime we
20 see that we've done something that would result in a
21 reduction and we delivered it, we ought to seek a
22 reduction, because that doesn't -- that doesn't impact what
23 the -- what's already happened with the financing. Because
24 as long as the base rate that is given to us satisfies our
25 ability to pay all of our expenses and meet debt service

1 ratios, then our investors are okay with that because we
2 haven't taken anything away from those investors. We
3 reduced expenses, which we've given those savings to the
4 customers, but we haven't taken anything away from our
5 ability to pay investors.

6 HEARING OFFICER: What do you anticipate would
7 be the reaction from your investors if you were to receive
8 the base rate increase by the end of December, but the PSC
9 schedules a base rate case to begin in January of 2020 --
10 that will be 2021?

11 MR. KUPFER: As long as it's called a
12 permanent base rate case, the rates are permanent, then I
13 don't think there would be an issue with that, particularly
14 because I think we will hopefully describe it as, you know,
15 to evaluate the transformation programs and to implement
16 savings to our rate customers as soon as possible after the
17 implementation of those projects.

18 HEARING EXAMINER: But in conclusion to that
19 question, WAPA doesn't have any objection to a permanent
20 base rate case being scheduled to begin in January 2021 if
21 it were to receive its base rate increase at this --

22 MR. KUPFER: Again, as long as the rates that
23 are given are permanent, investors know that the Authority
24 goes through rate cases in its normal course of business,
25 and as long as the investors understand that the end result

1 of those rate cases will be the Authority is covering its
2 expenses and has the sufficient debt service coverage
3 ratios to meet all its bond covenants, I don't think we
4 would have an objection to that.

5 HEARING EXAMINER: And how often does WAPA
6 communicate with Government House and the Office of
7 Disaster Recovery with regards to its efforts to secure
8 additional disaster recovery funding?

9 MR. KUPFER: Every day, every week.

10 And that's why we said at our Senate hearing that we
11 want the help of the senators to help lobby Congress and
12 the administration on getting more funding for us. There
13 is a couple very important things, and, you know, we want
14 the PSC supporting this, is that the FEMA related projects
15 are 90 percent FEMA, 10 percent HUD is the local match.
16 Under current law, under the Insular Area Act, which covers
17 us and Guam and some of the other islands, the director of
18 FEMA can waive that 10 percent local match and make it
19 100 percent FEMA without any change to law. However, the
20 FEMA director is not going to do that unless he gets
21 guidance from the White House that it's okay to do that.

22 And the governor is aware of that. Delegate Plaskett
23 is aware of that. The Senate is aware of that. And I
24 think we all as a body ought to be working together to
25 lobby Congress, lobby the administration on how important

1 that would be.

2 When I was in Washington a few weeks ago, at the same
3 time there were a number of senators from Puerto Rico who
4 were in Washington lobbying Congress on Puerto Rico's
5 behalf. We seem to just want to infight down here rather
6 than all work together. This is a once-in-a-lifetime
7 opportunity to grab as much of this funding as we can.

8 So that's very important to eliminate that local match
9 which frees up -- I think in total wise in the territory
10 there's about \$8 billion of FEMA projects. So that's
11 \$800 million of match that we need. That's got to come
12 from HUD, and that's a huge chunk of the HUD money that we
13 have. So that's why it's important to keep lobbying to get
14 that match eliminated.

15 Then the other thing I just described a little while
16 ago, Congress set aside \$2 billion for projects between
17 Puerto Rico and the U.S. Virgin Islands just for electric
18 projects. But Congress said, HUD, you figure out how you
19 are going to allocate it.

20 HUD got some information from FEMA, didn't tell FEMA
21 what you are going to use that information for, and said,
22 okay, USVI you get 70 million, Puerto Rico you get
23 1.93 billion. Immediately upon hearing that Governor Mapp
24 started lobbying Secretary Carson. We had a number of HUD
25 visitors come down. Any HUD person we talked to said, no,

1 that allocation wasn't done properly. The information you
2 got from FEMA was used incorrectly. If you had told FEMA
3 what you were going to use it for, they would have said no,
4 you can't use it for that. And ever since that
5 Governor Bryan has continued to lobby HUD to get that
6 allocation changed. And so that's another one that in one
7 collective voice we should be lobbying HUD, Congress, and
8 the administration to get that changed.

9 And, you know, Puerto Rico got in HUD money
10 \$18.4 billion. If we had another 400 million coming our
11 way, Puerto Rico would still be getting \$18 billion, but
12 that \$400 million would make a huge difference to the
13 Authority and only a marginal difference to Puerto Rico.
14 It's going to be on their last projects to implement. That
15 400 million would go to some of the very first projects
16 that we will implement.

17 I am going to get off my soapbox for now.

18 HEARING EXAMINER: Attorney Sprehn, you have
19 additional questions of Mr. Kupfer?

20 MR. SPREHN: Yes, I have. I hadn't quite
21 finished since we were waiting for that exhibit. Now I
22 have some redirect as well.

23 HEARING EXAMINER: I'm sorry, what was that?

24 MR. SPREHN: I said now I have some
25 redirect -- recross as well.

1 RECROSS-EXAMINATION

2 BY MR. SPREHN:

3 MR. SPREHN: We previously produced
4 Exhibit 24. Handing a copy to you and a copy across to
5 WAPA's counsel.6 On page 7 of this document is a list of WAPA's current
7 liability. This is as of last December.8 MR. KUPFER: That's why originally, you know,
9 it's at 1.2, you take off 400 million for the pension and
10 OPEB, leaving you with roughly 800 million.11 MR. SPREHN: I have a question regarding that.
12 The financial statements we reviewed yesterday, the pension
13 and OPEB numbers were substantially lower. They were 330
14 million, roughly, between 330 and 340. That's a
15 \$50 million difference.16 Has WAPA paid 50 million on its liability in the last
17 few months?

18 MS. GOTTLIEB: No.

19 What statement were you looking at? I'm sorry.

20 MR. SPREHN: It's attached to the testimony
21 that was filed in this case. In particular it was Exhibit,
22 I believe, 2 or 4 attached to the supplemental testimony of
23 PRMG.24 Actually, let me qualify that. I believe that was
25 actually attached to one of your MO filings.

1 MR. KUPFER: It was the June financials.

2 We can talk all day about pension and OPEB, but none
3 of these are audited statements. Even this was not based
4 on audited financials. Anything related to pension and
5 OPEB here is a ballpark estimate.

6 And, again, as we talked about yesterday, the GVI has
7 a significant pension issue, which impacts everybody here
8 in the room for the most part. So I'd rather stick to the
9 middle column, which are the true, you know, liabilities
10 and kind of go through those one by one.

11 MR. SPREHN: So the true liabilities you're
12 suggesting are the WAPA bonds and BANs, the RUS loans, the
13 CDL, the Vitol capital, et cetera?

14 MR. KUPFER: Yes.

15 MR. SPREHN: Except pension --

16 MR. KUPFER: And leaving pension and OPEB,
17 because that's just a problem the whole territory is
18 facing, and the territory needs to come up with a solution.
19 When it does, WAPA would be part of that solution. And I
20 don't think anybody here is an expert on pensions or OPEB,
21 so...

22 MR. SPREHN: Just so we're clear here then,
23 looking at those items, at least as of last December, these
24 liabilities are in the neighborhood of \$750 million, not
25 including the pension; is that correct?

1 MR. KUPFER: Yes. Right. So you asked if we
2 have a plan to pay those down, and the answer is yes.
3 Let's start from the top, the WAPA balance. Obviously the
4 principal and interest payments are built into the test
5 years as they've been submitted. So fiscal year 2020 has
6 all the principal and interest payments related to those
7 bonds and BANs and the RUS loan. The CDL loan, 94 million,
8 starting in I believe fiscal year '21, we will need to be
9 building into rates amortization of those loans. And at
10 the same time after four years, we can apply and have those
11 potentially forgiven.

12 Let me just back up for a minute. The 252 million of
13 WAPA bonds, they carry an interest expense of 5.7 percent,
14 which is not -- they were mostly issued when WAPA had a
15 good credit rating.

16 The CDL loans at 94 million carry about a 2.3 percent
17 interest, and as we're saying have the ability to be
18 forgiven and have been forgiven in other areas.

19 The Vitol capital of 160 million, you know that's
20 currently a 10 year loan at 50 percent. If you discount
21 back \$30 million a year for 10 million to pay off
22 \$160 million investment, it's a 15 percent interest rate.

23 We talked about our plans there with the private
24 investor, 20 years 7 to 8 percent. Ultimately RUS at
25 20 years at hopefully 3 to 4 percent number.

1 MR. SPREHN: Let me stop you there. Two
2 things on that. You mentioned in your cross -- redirect by
3 Attorney Hall approximately 39 million a year to Vitol,
4 which is an overall rate impact about 6 cents per kilowatt
5 hour; correct?

6 MR. KUPFER: Uh-huh.

7 MR. SPREHN: In your questions in response to
8 the Hearing Examiner, you talked about a 1.79 cent
9 reduction on a refinancing of Vitol; is that correct?

10 MR. KUPFER: Yes.

11 MR. SPREHN: So that would leave something
12 still in excess of 4 cents per kilowatt hour in rates for
13 the Vitol infrastructure project?

14 MR. KUPFER: Yes.

15 MR. SPREHN: And the proposed refinancing
16 could take what WAPA has agreed would be 10 year term. The
17 PSC has not approved that loan, but WAPA has agreed to a 10
18 year term and extend that to a 20 year or longer term; is
19 that correct?

20 MR. KUPFER: Yes.

21 MR. SPREHN: So in order to take a short-term
22 reduction in the future, we would double the term of the
23 project?

24 MR. KUPFER: Yes.

25 MR. SPREHN: Second question regarding Vitol.

1 In response to Hearing Examiner Hall, you said you were not
2 aware of any prudency review by the Commission on the Vitol
3 project; is that correct?

4 MR. KUPFER: Was that being referenced to the
5 87 million or the total 160?

6 MR. SPREHN: The total project.

7 MR. KUPFER: Yeah, I am not aware of a
8 prudency review on the total project.

9 MR. SPREHN: I'd like to note we are producing
10 today, as indicated, a number of orders that the Commission
11 has previously done. And I will particularly highlight
12 Order No. 25 of 2015, Order No. 66 of 2015, and Orders 56
13 through 59 of 2017.

14 HEARING EXAMINER: I'm sorry, that's 25 and?

15 MR. SPREHN: 25 and 66 of 2015 and Orders 56
16 through 59 of 2017.

17 HEARING EXAMINER: Okay. Those would be --

18 MR. SPREHN: I am not going to spend a lot of
19 time arguing the point.

20 HEARING EXAMINER: Just provide a general
21 description of those orders.

22 MR. SPREHN: 25-2015, the Commission found
23 that WAPA was to bear the uncertainty regarding LPG
24 conversion in future fuel costs. It addressed the prudency
25 and cost savings to the rate financing mechanism, which was

1 a LEAC charge. It limited the Vitol contract to the
2 87 million original contract only being approved. And it
3 had concerns with delayed excess fuel cost to delayed
4 repairs.

5 MR. HALL: I would object to that, unless you
6 can give us the paragraph so we can see the wording.

7 MR. SPREHN: You can have the entire words in
8 just a second. We are going to give copies of the whole --

9 MR. HALL: You are making representations
10 about it that I can't --

11 HEARING EXAMINER: I'll do this, because I'm
12 the one that asked him for a general description of what
13 those orders are, so I can understand what the relevance of
14 the orders are, what we'll do is after this recross, we
15 will break for 15 minutes; and then you can review the
16 orders, and if you have any redirect, we will do that.

17 Continue, Attorney Sprehn.

18 MR. SPREHN: I am going to actually ask
19 Mr. Kupfer to go through the Wartsila and Aggreko --

20 HEARING EXAMINER: That's fine.

21 MR. KUPFER: The Wartsila and Aggreko shown as
22 70 million; however, as I have discussed with
23 Ernst & Young, I think they overstated that amount, and I
24 will tell you why in a minute. We owe Wartsila. It's a
25 \$38 million project. We paid them roughly 20 million, I

1 believe; so we owe them another 20 million roughly to
2 finish the project. So that is a true liability as exist
3 today.

4 What they did to come up with the balance is that they
5 said, okay, Aggreko, you are going to be paying them this
6 amount every year for four years; so they took that amount
7 and say that's a liability today, which is -- so they in
8 essence capitalized that operating lease, which I don't
9 think is the proper treatment in terms of this liability.

10 MR. SPREHN: I'm sorry, I'm going to ask you
11 to start again on that.

12 MR. KUPFER: What they did with Aggreko is we
13 have -- well, incorrectly they show 48 month term on
14 Aggreko, but that's not correct. It's a two year term with
15 an option for a third year. But they said, okay, you owe
16 Aggreko, let's say, it's \$10 million a year. So they
17 multiplied 10 times 4, and they said today you have a
18 \$40 million liability to Aggreko. In essence, they turned
19 that -- they capitalized that operating lease, which in
20 terms of this presentation, in terms of our liabilities, I
21 don't think is a correct presentation.

22 Those generators are being funded from, you know, our
23 operating expenses, and so it's not like it's a true debt.
24 So that Wartsila number really should be 20 million, not
25 the 70 million.

1 The fuel vendors, the 25 to Trafigura, I have no idea
2 what's going to happen to that. We have not asked for
3 anything in rates related to Trafigura.

4 Glencore, again through the natural, just the way that
5 contract works, I believe eventually those balances will
6 come down without really difficulty. And we're working
7 with Vitol on drawing that balance down.

8 The nonfuel vendors of 83 million, when I look at
9 that, I think it includes, even though it says it doesn't,
10 some FEMA related vendors, and it should not include FEMA
11 related vendors. For our last period, what was our what we
12 called our operating payables, excluding Vitol, excluding
13 Glencore, and excluding the others, that was around
14 \$15 million payable.

15 Was that right?

16 MS. GOTTLIEB: Right.

17 MR. KUPFER: I believe this amount is
18 overstated. We will be happy to share with you what I
19 consider to be the correct amount, which is again taking
20 our payables, pulling out FEMA because they are funded by
21 the federal government, pulling out Vitol because they are
22 covered up above, pulling out the fuel vendors because they
23 are covered on those separate lines, and that's going to
24 leave you with what we call our ordinary trade payables,
25 which I think is around -- the end of September, was around

1 \$15 million. And that trade amount has been coming down
2 throughout this year. We can share that with you. I don't
3 believe that number is correct.

4 Then lastly the credit lines, yes, that bounces
5 around. Sometimes it gets high as 40; other times it's the
6 mid 30s. Both banks wants to see a plan for being paid
7 down, but they are not demanding an immediate pay back of
8 that loan. They would certainly feel a lot more -- they
9 will feel a lot better about this unsecured lines of credit
10 if we had the base rate petition approved. That would put
11 them in a much better position.

12 Quite frankly, when Delegate Plaskett issued her
13 letter to the governor talking about federal court
14 intervention, both FirstBank and Banco went crazy, because
15 they are an unsecured creditor, and they felt very
16 threatened by that letter.

17 So I think with these base rates in place, they will
18 feel a lot better about their position. And we need to
19 work with them. Is it a three-year plan, is it a
20 four-year, five-year plan to get them paid down, but I
21 think it's manageable. These lines of credit I believe are
22 at LIBOR plus maybe 3 or 400 percent; so they are
23 relatively low interest rate loans.

24 I think there is a plan for every one of these. The
25 most critical to us, being Vitol, because it's that 10

1 year, 15 percent; so it's the one that sticks out like a
2 sore thumb that's screaming to be refinanced, and has been
3 a real struggle for the Authority to keep current on.

4 MR. SPREHN: Yesterday when we talked about
5 Vitol, I believe you made the statement that you did not
6 believe that it was fair to characterize that \$73 million
7 excess of the original contract was cost overrun; is that
8 correct?

9 MR. KUPFER: Correct.

10 MR. SPREHN: Have you reviewed the original
11 contract in this case?

12 MR. KUPFER: Yes.

13 MR. SPREHN: Did it allocate the risk of
14 additional expenses to Vitol beyond a limited category of
15 increased costs?

16 MR. KUPFER: My reading of the contract says
17 that, you know, if there is unforeseen conditions, they're
18 going to be subject to change order.

19 MR. SPREHN: As, Hearing Examiner, Mr. Kupfer
20 was not the responsible manager at the time of the contract
21 or the amendments, it's probably somewhat unfair to grill
22 him on the subject. However, I would certainly like to put
23 in the record in this case the Vitol contracts and both of
24 its amendments.

25 MR. HALL: No objection.

1 HEARING EXAMINER: That's fine. I think we
2 are up to now Exhibit 25.

3 MR. SPREHN: I'll have to take your count on
4 that. Yes, we did -- I'm sorry, we did 30 originally.

5 HEARING EXAMINER: So you just gave me an
6 Exhibit 23. Was that --

7 MR. SPREHN: That was one you already had.
8 Just for convenience.

9 HEARING EXAMINER: So then we are up to 31.

10 MR. SPREHN: It will be 31, 32, and 33.

11 HEARING EXAMINER: Well, if they are
12 amendments, then they are all part of the contract; right?
13 You want to treat them separately?

14 MR. SPREHN: We can print it that way and make
15 it available to you that way. They have different dates on
16 them.

17 HEARING EXAMINER: That's fine. 31 would be
18 the Vitol contract, which would include any amendments to
19 the contract.

20 (Vitol Contract and Amendments were marked as
21 PSC's Exhibit 31 for identification.)

22 HEARING EXAMINER: Are you going to ask any
23 questions about the contract?

24 MR. SPREHN: I do not think that's fair to
25 Mr. Kupfer to do that, to be honest.

1 MR. HALL: We have no objection of asking
2 Mr. Kupfer questions about the contract. He obviously has
3 to implement it, so...

4 MR. SPREHN: I will go ahead then.

5 HEARING EXAMINER: Do we have the copies of
6 the contract?

7 MR. SPREHN: We can get them. Is this a
8 reasonable time to take a break?

9 HEARING EXAMINER: The contract is lengthy?
10 And then the counsel for WAPA needs to review the
11 orders that were given to them.

12 MR. HALL: Yes.

13 HEARING EXAMINER: So I suggest we take a 20
14 minute break.

15 MR. HALL: That's fine.

16 (A recess was taken at this time.)

17 HEARING EXAMINER: So we are back on.

18 MR. SPREHN: I want to first make a note that
19 on the earlier production of orders that we made this
20 morning, there was a typo in my e-mail to Ms. Hendricks.
21 She printed the wrong one as a result of my typo. It's
22 Order 26 of 2016 that you were supposed to get. You will
23 get a copy of that order very shortly.

24 MS. THOMAS-GRIFFITH: We received it.

25 MR. SPREHN: You should now have in front of

1 you copies of the Vitol agreement, the original contract
2 execution version with the signatures, as well as the
3 amendments and the notice of filing.

4 MR. HALL: What's the exhibit number going to
5 be?

6 MR. SPREHN: We are making this Exhibit
7 No. 33, I believe. Yes, this is all Exhibit No. 33.

8 MS. THOMAS-GRIFFITH: What was 32, may I ask?

9 MR. SPREHN: I'm sorry?

10 MS. THOMAS-GRIFFITH: The last exhibit I note
11 is we had indicated it would be 31, the Vitol contract and
12 the amendments.

13 HEARING EXAMINER: It's 31. My apologies.

14 MR. SPREHN: 31?

15 HEARING EXAMINER: Yes.

16 MR. HALL: Vitol contract is now 31?

17 MR. SPREHN: 31.

18 Mr. Kupfer, on this agreement which party assumed the
19 risk of cost overruns?

20 MR. KUPFER: Well, there is different
21 categories, but clearly WAPA was responsible for change
22 orders. I think it may be easier for WAPA to go through
23 the pertinent sections that relate to changes in cost,
24 present those, and then maybe have some questions asked,
25 because I think looking at those first will at least

1 present from WAPA's perspective why we believe that --
2 again, as design changes were made, and those change orders
3 were submitted to WAPA, WAPA approved those because they
4 were true changes to the scope of the project but...

5 MR. SPREHN: All due respect, I'd rather not.
6 That process has been done in front of the Commission. It
7 has been rejected. And there's no new evidence that we
8 have been told -- in this proceeding that there is no new
9 evidence that's been submitted here to change that
10 Commission's conclusion.

11 MR. KUPFER: Go ahead and ask your questions.

12 HEARING EXAMINER: When you're questioning
13 regarding the Vitol contract, if you can just direct me to
14 the particular paragraph or section of the contract.

15 MR. SPREHN: Happy to do so. Right now we are
16 looking at Section 5.01, subparagraph c, located on page
17 20, as the page document is numbered, on the original
18 agreement.

19 HEARING EXAMINER: Thank you.

20 MR. SPREHN: Do you need a paper copy of this,
21 Mr. Kupfer?

22 MR. KUPFER: No, I have it in front me. And
23 this was the exact section I was going to take you to
24 second after reviewing the definition of FEED Study.

25 MR. SPREHN: On paragraph 5(c), would you read

1 that paragraph, please.

2 MR. KUPFER: "The Parties shall agree on any
3 necessary increase or decrease of the Infrastructure
4 Recovery Fee resulting from completion of the Studies
5 (and/or to account for any Revised GE Expenses set forth
6 above), in the Monthly Infrastructure Recovery Fee shall be
7 reduced or increased, as applicable, by Three US Dollars
8 for every One Hundred US Dollars reduction or increase in
9 the Project Budget. Except for the Revised GE Expenses,
10 the only aspects of the Project Budget which are subject to
11 potential increases are (a) the costs of upgrading WAPA's
12 docks on St. Thomas or other jetty work on St. Thomas as
13 determined by the Studies, and (b) the increased costs
14 relating to any Change Order requested by WAPA after the
15 execution hereof or otherwise provided pursuant to Sections
16 7.09 or 7.15."

17 MR. SPREHN: Did WAPA change the scope of this
18 project other than the jetty docks?

19 MR. KUPFER: Yes.

20 MR. SPREHN: What did WAPA change?

21 MR. KUPFER: Greg, why don't you come up.

22 Those changes were determined by the FEED Study, which
23 if you would like to go back to the definition of
24 FEED Study, I'd be happy to do that.

25 MR. SPREHN: Before we do that, let's go first

1 to paragraph 7.15, which is on page --

2 MR. KUPFER: Unanticipated changes (sic), yes,
3 let's go there, because that's the second page I was going
4 to go. Okay, I'm there.

5 MR. SPREHN: And what is the title of section
6 7.15?

7 MR. KUPFER: "Unanticipated Conditions."

8 MR. SPREHN: And does this paragraph state
9 that the seller has had the opportunity to inspect the
10 area, including all staging, as-built, ingress, egress to
11 the property?

12 MR. KUPFER: The aboveground areas.

13 MR. SPREHN: Yes.

14 MR. KUPFER: That's different than underground
15 conditions. That's why I am being clear.

16 MR. SPREHN: Are the underground conditions --

17 MR. KUPFER: The readily apparent surface
18 conditions.

19 MR. SPREHN: Are you familiar with the
20 airport?

21 MR. KUPFER: Which airport?

22 MR. SPREHN: St. Thomas airport.

23 MR. KUPFER: Yes.

24 MR. SPREHN: Is the hillside cut away on that
25 hillside? As you approach the airport, has the hillside

1 been cut away?

2 MR. KUPFER: Yes.

3 MR. SPREHN: How long has WAPA been operating
4 in its current location?

5 MR. KUPFER: 1954. I don't know.

6 MR. SPREHN: Is there any reason to believe
7 that WAPA did not understand that the hillside it was
8 located on was made out of rock?

9 MR. RHYMER: Can I answer that?

10 MR. KUPFER: Yes, please do.

11 MR. RHYMER: Do I need to swear in again?

12 HEARING EXAMINER: Again, no, not if you were
13 swore in yesterday.

14 MR. RHYMER: Good morning. First thing is
15 that we need to understand WAPA has never built on that
16 hillside. WAPA property, its power plant right now on
17 St. Thomas is down on filled property that was piled.
18 We've never built anything on that rock. There was no
19 information available to the Authority on the geotechnical
20 information on that hill.

21 MR. SPREHN: As indicated, I don't intend to
22 retry this hearing. We had this hearing before.

23 I just would like you to take a look briefly at
24 Schedule L attached to this document.

25 MR. KUPFER: You want to give me a page

1 number?

2 MR. SPREHN: It will be after all the
3 signature pages. They numbered it L-1.

4 If you are going through the PDF, it will probably be
5 91 of 97.

6 HEARING EXAMINER: Let me make sure I have
7 Schedule L.

8 MR. SPREHN: Exhibit L.

9 Ms. Hendricks has noted for me that they accidentally
10 numbered it as M-L, but it's Exhibit L. It's page 91 of 97
11 of the PDF, near the back of the document.

12 MS. THOMAS-GRIFFITH: Is there information on
13 your sheet?

14 MR. SPREHN: No.

15 HEARING EXAMINER: Talking about at the back
16 of the contract?

17 MR. SPREHN: Yes. It's part of the contract.

18 HEARING EXAMINER: Got it. Thank you.

19 MR. SPREHN: Is there any projected budget
20 provided in this contract?

21 MR. KUPFER: Not on this page.

22 MR. SPREHN: How much in cost increases did
23 Vitol request and WAPA deny?

24 MR. RHYMER: I don't have that information,
25 but there were some. Not everything was approved that they

1 brought to our attention.

2 MR. SPREHN: But you don't know what that was?

3 MR. RHYMER: No.

4 MR. SPREHN: I have nothing further on this
5 one.

6 HEARING EXAMINER: Okay. Did you have
7 additional recross?

8 MR. SPREHN: I think we need to move along.

9 HEARING EXAMINER: That's fine.

10 You want to call your next witness.

11 MR. HALL: Just a brief.

12 HEARING EXAMINER: Follow-up on the Vitol
13 contract?

14 MR. HALL: Yes.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. HALL:

17 MR. HALL: Directing your attention to this
18 contract that's been provided to me by the Authority, I
19 want to ask you, do you recognize this?

20 MR. RHYMER: Schedule L, yes.

21 MR. HALL: There was a Schedule L?

22 MR. RHYMER: Yes.

23 MR. HALL: That was agreed on?

24 MR. RHYMER: Yes.

25 MR. HALL: And is that the schedule?

1 MR. RHYMER: Yes.

2 MR. HALL: I'd ask that that be marked as
3 Exhibit BB.

4 MR. SPREHN: Not having seen it, I can't offer
5 any comment on it at all.

6 HEARING EXAMINER: Do we have copies of that?

7 MR. HALL: Not right now, but on the break we
8 can get --

9 HEARING EXAMINER: Run a copy for everyone.

10 MR. HALL: I have no further questions.

11 MR. SPREHN: Are we marking this as an
12 exhibit?

13 HEARING EXAMINER: This is the same Exhibit L
14 that's attached to the exhibit, or this is an amended
15 Exhibit L?

16 MR. HALL: Yes, we are entering this as
17 Exhibit L per the testimony of Mr. Rhymer.

18 MR. SPREHN: I will object to that. The copy
19 that was filed with the Commission does not include this
20 information.

21 MR. HALL: I can't explain that. All I can --

22 HEARING EXAMINER: Before we put it on the
23 record, can we just hear some testimony on it?

24 MR. HALL: Yes, I am going to ask the witness.

25 HEARING EXAMINER: And then, Attorney Sprehn,

1 if you still have an objection after the testimony, you can
2 raise it.

3 MR. HALL: Mr. Kupfer, directing your
4 attention to Exhibit L --

5 HEARING EXAMINER: Let's not call it Exhibit L
6 though. Let's call it Exhibit BB, all right.

7 MR. HALL: Mr. Kupfer, directing your
8 attention to Exhibit BB, do you recognize that?

9 MR. KUPFER: I haven't seen it before, no.

10 MR. HALL: The Authority has provided that to
11 me indicating that it was part of the original agreement.
12 Maybe Attorney --

13 MR. KUPFER: Mr. Rhymer can speak to it.

14 MR. HALL: -- Farrington or Mr. Rhymer can
15 attest to that.

16 MR. RHYMER: Yes, I've seen this before. I
17 seen this content, everything before.

18 MR. HALL: To your knowledge, was there an
19 agreement between Vitol and the Authority on Exhibit L?

20 MR. RHYMER: Yes.

21 MR. HALL: Now marked as double B.

22 MR. RHYMER: Yes.

23 MR. HALL: Ms. Farrington.

24 MS. FARRINGTON: Yes, good morning. The
25 Exhibit L was presented to the Commission, albeit it was

1 not in the original contract. There was an issue that the
2 Commission brought up about the project budget. That was
3 inadvertently not with the main contract, but it had been
4 presented, and it was the subject of much discussion before
5 the Commission when they asked to see the project budget
6 document, and that document was provided to the Commission.

7 HEARING EXAMINER: Do you recall when that
8 was?

9 MS. CHRISTIAN: August 25, 2016.

10 MR. SPREHN: Transcripts of those proceedings
11 at your prior direction are being made available to you.

12 MS. CHRISTIAN: Can I respond?

13 HEARING EXAMINER: Yes.

14 MS. CHRISTIAN: The chairman at that time
15 stated that he considers the issue of Schedule L resolved
16 when we provided the original and the revised Schedule L in
17 that proceeding.

18 HEARING EXAMINER: Thank you.

19 MR. HALL: Mr. Kupfer.

20 MR. KUPFER: What I would like to do is first
21 go through this contract. I'm on page 3, looking at the
22 definitions. I'd like to read the definition of
23 FEED Study. "Means a Front-End Engineering and Design
24 study with respect to the Constructed and Converted
25 Facilities and the Offshore Infrastructure, which shall

1 include a Hazardous Area Classification study to determine
2 the possible effects of the introduction of LPG fuel at the
3 Harley Plant and the Richmond Plant as it relates to the
4 equipment surrounding the turbines."

5 So this is referencing a study to be done after the
6 documents were signed and to be done by Vitol. To do the
7 actual design of the constructed facilities, which includes
8 the LPG, offloading, the storage facilities, the boilers,
9 the vaporizers. The converted facilities relates to the
10 gas turbines, which were being converted to propane. And
11 the offshore infrastructure that is the docks and what
12 wound up being a offshore single point mooring to handle
13 the deliveries of propane.

14 And we will see later on in the document that this
15 study was not done before the documents were signed; so
16 there had been no front-end engineering and design work
17 done prior to the documents being executed. And that's the
18 point we made yesterday. And, again, this was done because
19 of the urgency of getting the project started because of
20 the significant savings in time to start without doing the
21 front-end engineering design, without having a detailed
22 estimate, so that, you know, two to three years could be
23 shaved off the schedule.

24 I also need to say from my 30 plus years of being
25 involved in design, engineering, construction of large

1 projects, there is no contractor in the world that's going
2 to enter a fixed price lump sum contract without having
3 done a front-end engineering and design study. So to think
4 that this is a lump sum of 87 million and not subject to
5 changes is just frankly la-la land.

6 Let's go to 5.01, which I agree is an important
7 paragraph. And I've read it once; so I am not going to
8 read it again. But it certainly makes clear that any extra
9 costs for the WAPA docks on St. Thomas or St. Croix was an
10 extra cost. I think Mr. Rhymer can describe what had to
11 happen to those docks.

12 So, Greg, why don't you talk about the extra work at
13 the docks.

14 MR. SPREHN: None of this is information that
15 I've been provided before, but subject to cross-examination
16 at a previous time. I really don't intend to retry that --

17 MR. KUPFER: You brought it up.

18 HEARING EXAMINER: I understand but for my
19 benefit I'm going to allow Mr. Rhymer to answer.

20 MR. SPREHN: I am going to ask for the
21 transcripts on those prior hearings and supporting
22 documents also be made available to you.

23 HEARING EXAMINER: Thank you.

24 Mr. Rhymer.

25 MR. RHYMER: In the initial evaluation of the

1 docks, both St. Thomas and St. Croix, Vitol brought in a
2 bunch of specialist that do underwater construction,
3 et cetera. They looked at our docks on both St. Thomas and
4 St. Croix and recognized immediately that those docks were
5 not safe.

6 In St. Thomas we were operating pretty much on a rig
7 type mooring operation. At that time when Vitol was
8 exploring the docks, because our dock was hit by Trafigura,
9 one of Trafigura's barge, and the docks were pretty much
10 unsafe. The Coast Guard, everyone, regardless of what,
11 WAPA would have had to upgrade those docking facility.
12 Basically you had to go in, place new piles, et cetera,
13 place new fire protection system on the docks. None of
14 that existed. We had to dredge the channel in St. Croix.
15 The docks them were completely refurbished to
16 state-of-the-art safe berthing facilities and was
17 absolutely necessary, whether we did this Vitol project or
18 not.

19 MR. KUPFER: The point I want to make here,
20 here the contract clearly states that the docks are an
21 issue and subject to cost increases, yet we hear over and
22 over again that 87 million has got to be the number. So it
23 doesn't recognize that the docks were a major problem in
24 the contract. It stated so. No relief has ever been given
25 for the docks.

1 MR. RHYMER: For the record, the repairs to
2 the docks I think was combined both islands was either 20
3 or 25 million dollars.

4 MR. KUPFER: So let's go to unanticipated
5 conditions.

6 MR. RHYMER: In addition to that, Mr. Kupfer,
7 while pursuing the permits for the facility, we were never
8 able to get the Army Corps of Engineers and the National
9 Marine Fisheries to agree to allow us to anchor what we
10 call the big ship or the mother ship out there. Their
11 thing was they didn't want us to be pulling anchor back and
12 forth for the potential of disturbing the marine life and
13 potentially creating harm to the environment.

14 So they said we need you to have a single point
15 mooring, and you need to do a study, find an area that
16 doesn't have much sensitivity, no sensitivity at all and
17 build that single point mooring there. And you have a
18 single point that you could always come to, and we will
19 know for sure that you would not be creating any harm to
20 the environment.

21 In addition to that, there were about 25 conditions
22 laid upon that particular dock. That alone in itself to
23 install that single point mooring, do the current studies,
24 do the whole nine yards was about a \$6 million undertaken
25 that was not anticipated at all. The studies that were

1 related to that was -- and always done by the University of
2 the Virgin Islands got very close to a million dollars, if
3 not a million and over.

4 MR. KUPFER: So I'm on 7.15 "Unanticipated
5 Conditions." And, again, my reading of this is that Vitol
6 made a visual review of the readily apparent surface
7 conditions, meaning that there was no soil analysis done on
8 either site, either being St. Thomas or St. Croix. And
9 I'll have Mr. Rhymer describe issues both here in
10 St. Thomas and in St. Croix.

11 MR. RHYMER: I'll start with St. Croix. The
12 project originally anticipated a certain amount of piling
13 on St. Croix based on information they had available to
14 them. Given the area was filled, we had some information
15 on the area. However, when we went into the area, we
16 recognized that the piles that we need tripled in order to
17 meet the design that they were anticipating, the structural
18 integrity, they were anticipating tripled. That was not
19 foreseen.

20 And one of the things that created that problem, when
21 we went into the soil in St. Croix in the geotechnical
22 evaluation, some black substance was observed, and
23 immediately with WAPA being in the area, it was suspected
24 of being oil. All right. We went, we did this TPLC
25 analysis, which is a screening for hazardous contaminants,

1 et cetera. Found out it was molasses, the rum leese,
2 because the site was used as a storage for rum back in the
3 early days before it, you know, was developed to where it
4 is now. And apparently they used to dump the molasses or
5 the rum leese into the ground there.

6 So that forced us to unearth all the areas around
7 there to determine what this black stuff was and what was
8 contributing to it. That increased piling on the project
9 significantly --

10 HEARING EXAMINER: I just want --

11 MR. RHYMER: -- because we had to open a big
12 hole now to study that area. And this was something that
13 the -- what you call them, Historic Preservation and the
14 geologists, because once they started seeing things like
15 the rum leese, et cetera, it reminded them somewhat I think
16 that there may be some historic things about this
17 particular area, and we need to further examine it before
18 we build it.

19 HEARING EXAMINER: I just need to inquire
20 though, so at some point the amendments to the contracts
21 were provided to the PSC for approval or review?

22 MR. SPREHN: For inclusion in rates.

23 HEARING EXAMINER: And the PSC declined to
24 include --

25 MR. SPREHN: That's correct.

1 MR. HALL: We take issue with that,
2 Madam Hearing Examiner. We are happy to go through the
3 orders that counsel has provided. I think you will see
4 what the Commission authorized, but we've never had a
5 prudency hearing. We are prepared to discuss that.

6 MR. KUPFER: It's pretty clear that there were
7 unanticipated conditions that was going to lead to an
8 increase in project cost. But, again, we are stuck in the
9 mud at \$87 million.

10 The last section I am going to go over is 8.01
11 "Seller's Responsibilities," item (a)(i). "The FEED Study
12 provided that the parties" --

13 "Promptly following the execution hereof, procure,"
14 that means Vitol is to procure.

15 "The FEED Study; provided that the Parties will
16 mutually agree on how to implement any necessary
17 modifications to the existing Plants as a result of the
18 FEED Study and WAPA shall be responsible for the costs, if
19 any, associated with the modifications."

20 That second part is just referring to the
21 modifications within WAPA's plants, but here in Vitol was
22 to secure the FEED Study. And that FEED Study, again
23 nothing -- no detailed engineering or design had been done
24 before. That FEED Study led to the numerous change orders,
25 which in 5.01 it's clear that WAPA approves change orders

1 if it agrees that the change that is presented is required
2 by -- it doesn't say it, but by the FEED Study that
3 identify the need for such a change.

4 And so that part again to me is no front-end
5 engineering design work was done. It's clear from 5.01
6 that WAPA is responsible for all change orders. And there
7 were change orders that resulted from the completion of the
8 front-end engineering and design.

9 Were there other issues with the project? Yes. But
10 to say that we are 87 or nothing, based on -- you know, we
11 know the docks and offshore infrastructure was an issue; we
12 know there was unanticipated changes; we know a FEED Study
13 had to be done. To say that Vitrol was on the hook for
14 everything above 87 million, is just not reasonable based
15 on my reading of the contract and my experience in the
16 industry of what this type of contract would require the
17 contractor to do.

18 HEARING EXAMINER: But WAPA doesn't dispute
19 that the PSC made a prior decision not to include the
20 additional costs associated with the amendments?

21 MR. HALL: Without foreclosing the opportunity
22 to persuade them otherwise.

23 HEARING EXAMINER: I'm sorry, without
24 foreclosing the?

25 MR. HALL: The opportunity to persuade them

1 otherwise. We had submitted volumes of documents. What we
2 haven't had is a hearing where people like Mr. Kupfer,
3 Mr. Rhymer testified about the prudence of the
4 expenditures.

5 HEARING EXAMINER: And did WAPA move to
6 reconsider that decision?

7 MR. HALL: I think you have to see the orders
8 to see whether they precluded us. We haven't appealed
9 those decisions but --

10 HEARING EXAMINER: There was no appeal of the
11 decision?

12 MR. HALL: There was no appeal of the
13 decision, but there was nothing in the orders that we felt
14 prevented us from coming forward and showing the prudence
15 of the project. We said that --

16 HEARING EXAMINER: And what is the PSC's
17 position on that, Attorney Sprehn? Is this issue
18 foreclosed by the prior decision?

19 Ultimately I am going to ask both parties to brief the
20 issue in closing, but I just wanted to get the PSC's
21 position as it stands now.

22 MR. SPREHN: The position I have argued here
23 is that in the absence of new information, that there's no
24 reason to reopen that hearing, and that WAPA has conceded
25 they have not submitted any new information at this

1 hearing. I did not say or argue that WAPA is foreclosed
2 for doing so. It just hasn't happened.

3 MR. KUPFER: While we have the contract open,
4 I would like to refer back to Section 5.02, which refers to
5 the operations and maintenance fee.

6 HEARING EXAMINER: What was that?

7 MR. KUPFER: 5.02, which covers the operations
8 and maintenance fee.

9 And so 5.02 (a), "A draft of the first annual
10 operations and management budget shall be delivered by
11 Seller to WAPA for consideration and approval at least 120
12 calendar days prior to Substantial Completion (the First
13 O&M Budget)."

14 Up above it talks about how the budget will be
15 submitted 120 calendar days prior to the end of each
16 calendar year during the term with respect and blah, blah,
17 blah. But, again, it is clear from 5.02, one, that there
18 was no budget contained in the initial contract, and that
19 the operation and maintenance fee was intended to adjust
20 annually based on discussions between WAPA and the
21 Authority (sic). So to say the 5 million number is fixed
22 in stone forever is just not in accordance with the
23 contract which has been approved by our board.

24 MS. FARRINGTON: May I?

25 I just wanted to add something on the issue of whether

1 or not we're precluded from revisiting this issue. As
2 recent as I would say a month ago, the PSC has directed us
3 to submit an audit of the expenses associated with the
4 Vitol contract. I mean, consistent with that is the
5 understanding that if we can prove that the moneys that
6 were spent were legitimately spent on the project, that the
7 PSC will revisit this matter. So we are not doing this
8 audit because we just like to do audits. There is an
9 understanding between the parties that there can be some
10 movement in this matter.

11 HEARING EXAMINER: What is the status of the
12 audit? Is this the audit that's supposed to be completed
13 on Thursday?

14 MS. FARRINGTON: Correct, that Ms. Gottlieb
15 previously testified to.

16 HEARING EXAMINER: That order regarding the
17 audit is included in these orders?

18 MR. SPREHN: No.

19 MR. HALL: I will ask that it be included.

20 HEARING EXAMINER: If I could get a copy of
21 that order.

22 With regards to the work that was done pursuant to the
23 amendments of the Vitol contract, has the territory or the
24 ratepayers received any benefits due to that additional
25 work?

1 In other words, particularly since the PSC'S prior
2 denial to include those additional costs in a base rate,
3 since that time, has there been any benefit to the
4 ratepayers for the work -- that additional work that was
5 done pursuant to those amendments?

6 MR. KUPFER: The Vitol project as constructed
7 is providing benefits and will continue to provide benefits
8 to the Authority and its ratepayers for the next 20 plus
9 years. It's a long-term asset. So, yes, it will.

10 HEARING EXAMINER: Is WAPA able to capture in
11 some sort of document or some sort of exhibit the value to
12 the ratepayers of the benefit of that work from the time
13 that those costs were initially denied by the PSC?

14 So, for instance, for purpose of this discussion,
15 let's say the PSC denied these costs in January of 2018.
16 Is WAPA able to present something showing a value of that
17 benefit since that time?

18 MR. KUPFER: Yes, I would argue it's the
19 benefit over the expected life of the project, that that's
20 what the territory will receive that benefit. But I
21 wouldn't limit it to just this time frame, because it's a
22 -- you know, it's a long-lived asset, as I said, would
23 benefit the territory.

24 You know, if we had -- let's say we had gotten the
25 first inkling that the prices were going to go up and we

1 canceled the contract, you know, we never would have had
2 propane. But that just wasn't realistic or practical to
3 do, and we don't think was even justified to do. But,
4 again, the changes were made. Again, we knew the docks and
5 the offshore infrastructure was an issue, we know that the
6 soil conditions were an issue, and we know no front-end
7 engineering and design work had been done. So, of course,
8 there were going to be changes above the \$87 million.

9 MR. SPREHN: With due respect, Public Services
10 Commission has never argued that propane as a fuel is not a
11 rational choice or a benefit. The question is not one of
12 whether they should have done, whether or not the actions
13 that were undertaken were reasonable and prudent, but
14 whether those expenses ought to be passed to the ratepayer.

15 HEARING EXAMINER: Understood.

16 Let's assume that Attorney Sprehn's legal position is
17 accurate, that there needs to be some sort of new
18 evidence --

19 MS. THOMAS-GRIFFITH: What Attorney Sprehn
20 defined as the issue here, whether or not these costs were
21 reasonable and prudent, is the very thing we're saying has
22 never occurred before the PSC. There in fact have been
23 denials of amounts above the 87 million, but there has
24 never been, despite the volumes of data -- and we have a
25 witness that will speak today about the response that WAPA

1 has made to the levels of the inquiries coming from the
2 commissioners.

3 What the commissioners have never done and what you
4 would not find in the orders that we have been given today
5 is any assessment on a situation by situation, line by
6 line, cost by cost determination as to the prudence of
7 those costs, not today but as of the time when those costs
8 and expenses were being incurred. We had never had that
9 level of assessment by the Commission. That's in fact what
10 would be required for Attorney Sprehn or the commissioners
11 to say to us, this issue is a foreclosed one.

12 I agree with Attorney Farrington, it clearly is not
13 foreclosed if very recently we are still being asked to
14 produce an audit and respond --

15 HEARING EXAMINER: I haven't seen the order
16 for the audit; so I don't want to guess at what the basis
17 for that order was.

18 But let's assume, for sake of argument, that a legal
19 analysis were to show that WAPA's failure to appeal that
20 earlier decision deems that waived, right. So let's say
21 there's a waiver issue. From the time of the decision of
22 the PSC, is there any new evidence that WAPA has as to why
23 this matter needs to be revisited, as to why this is a
24 fresh issue to be considered?

25 MS. THOMAS-GRIFFITH: We -- the orders that we

1 received, if you look at them, what the PSC has said to us
2 is, we require additional information. Order No. 25 speaks
3 to the issue of completeness. And there were questions
4 that go along the way that PSC has raised. WAPA at every
5 step in response to those kinds of statements by the
6 Commission has endeavored to put forward the continuing
7 data to support its position.

8 From our view this issue -- there has been no waiver
9 because this issue has been a continuing one, as recently
10 as the most recent order requiring the audit, affording the
11 Authority the position that it's in today, continuing to
12 sustain and defend and put forward the evidence to support
13 the fact that these costs were reasonable and prudent at
14 the time that they were incurred.

15 HEARING EXAMINER: And who is performing the
16 audit?

17 MR. KUPFER: Bert Smith.

18 HEARING EXAMINER: Attorney Sprehn, assuming
19 you were to receive the audit tomorrow, the results of the
20 audit tomorrow, would you have the need to make any
21 inquiries regarding the audit for purposes of this current
22 base rate case?

23 MR. SPREHN: That's a lot of speculation.

24 HEARING EXAMINER: In other words, if WAPA
25 were to produce the audit tomorrow and submit it to be

1 included in the record, would you desire the opportunity to
2 ask any questions related to the audit?

3 MR. SPREHN: I would think so. I would
4 imagine so, yes.

5 HEARING EXAMINER: And would written questions
6 related to the audit be satisfactory?

7 MR. SPREHN: I can't answer that.

8 HEARING EXAMINER: All right. Any additional
9 questions for Mr. Kupfer?

10 MR. HALL: Mr. Kupfer, can you tell us when --
11 where the audit is in terms of its completion?

12 MR. KUPFER: We were supposed to get a draft
13 yesterday from Bert Smith.

14 Debra, did we?

15 MS. GOTTLIEB: No, we did not. I've been
16 trying to reach the auditor.

17 MR. KUPFER: The second draft I should say.

18 MR. HALL: And just so we're clear, when did
19 the Commission ask for the audit? Or strike that.

20 At the last meeting do you recall what the desire of
21 the Commission was with respect to an audit?

22 MR. KUPFER: I don't -- we'd have to see the
23 order. But they wanted to see it before the -- any final
24 decision was made related to the base rates?

25 MR. HALL: Did they say that?

1 MR. KUPFER: Yes, I believe the order says
2 that.

3 MR. HALL: That's what I was trying to elicit.
4 Thank you.

5 HEARING EXAMINER: Any additional questions
6 for Mr. Kupfer?

7 MR. SPREHN: No, thank you.

8 HEARING EXAMINER: Thank you, Mr. Kupfer.

9 It's 12:11. Right now we will break until 1:15.

10 We will resume with your next witness. Who is your
11 next witness?

12 MS. THOMAS-GRIFFITH: Akeyla Christian.

13 (Luncheon recess taken at 12:11 p.m.)

14 (Afternoon session resumed at 1:21 p.m.)

15 HEARING EXAMINER: We are back on the record.

16 You may proceed, WAPA.

17 MS. THOMAS-GRIFFITH: Ms. Christian.

18 MS. CHRISTIAN: Yes.

19 MS. THOMAS-GRIFFITH: We are ready to proceed.

20 DIRECT EXAMINATION

21 BY MS. THOMAS-GRIFFITH:

22 MS. THOMAS-GRIFFITH: Before you are a stack
23 of orders that were produced to us in connection with this
24 hearing today by PSC counsel. Do you have those before
25 you?

1 MS. CHRISTIAN: Yes, I do.

2 MS. THOMAS-GRIFFITH: Could you identify for
3 us what the first order in the series is?

4 MS. CHRISTIAN: Order 25-2015.

5 MS. THOMAS-GRIFFITH: And what is the date of
6 the order?

7 MS. CHRISTIAN: The date of the order is
8 January 16, 2015.

9 MS. THOMAS-GRIFFITH: Were you employed at
10 WAPA on that date?

11 MS. CHRISTIAN: Yes, I was.

12 MS. THOMAS-GRIFFITH: Would it be customary as
13 a part of your duties with WAPA that you would attend PSC
14 meetings before the Commission?

15 MS. CHRISTIAN: Yes.

16 MS. THOMAS-GRIFFITH: And do you have any
17 recollection with respect to this particular order whether
18 you've seen this order before?

19 MS. CHRISTIAN: Yes, I have.

20 MS. THOMAS-GRIFFITH: Tell us what you
21 recognize about the order.

22 MS. CHRISTIAN: I recommend --

23 MS. THOMAS-GRIFFITH: What you recognize.

24 HEARING EXAMINER: I'll go ahead and take
25 judicial notice of all the orders, so that you don't have

1 to do the foundation.

2 MS. THOMAS-GRIFFITH: Thank you.

3 In connection with that order, PSC has proposed to us
4 that the series before you includes prudency determinations
5 made by the PSC.

6 Have you ever attended a meeting of the PSC where a
7 prudency determination was made with regards to the Vitol
8 contract?

9 MS. CHRISTIAN: No.

10 MS. THOMAS-GRIFFITH: During the period from
11 the first order in the series -- and please direct your
12 attention to the very last order in the series.

13 MR. SPREHN: Just for any clarification, the
14 first one you were discussing was 25-2015?

15 MS. THOMAS-GRIFFITH: Yes.

16 MR. SPREHN: The one you're going to discuss
17 now is?

18 MS. THOMAS-GRIFFITH: 59 of 2017. I think
19 that's the last one of the series.

20 HEARING EXAMINER: Just to be clear, 25 of
21 2015 is for Docket No. 289?

22 MS. THOMAS-GRIFFITH: Correct.

23 MS. CHRISTIAN: Give me a second.

24 HEARING EXAMINER: And then the one you're
25 looking for right now is which one?

1 MS. THOMAS-GRIFFITH: It should be 59 of 2017.
2 Should be the last order with the pink tab on it.

3 You don't have 59?

4 MS. CHRISTIAN: No. This may be it right
5 here. Yes.

6 MS. THOMAS-GRIFFITH: What's the date on
7 Order No. 59 of 217?

8 MS. CHRISTIAN: June 22, 2017.

9 MS. THOMAS-GRIFFITH: Were you working at WAPA
10 June 22, 2017?

11 MS. CHRISTIAN: Yes, I was.

12 MS. THOMAS-GRIFFITH: Would it have been the
13 case that you would have been in attendance of all the
14 meetings across that period of time coming before the
15 Commission?

16 MS. CHRISTIAN: Yes, I was.

17 MS. THOMAS-GRIFFITH: Have you ever attended a
18 meeting before the Commission where a prudency
19 determination was made with respect to the Vitol contract?

20 MS. CHRISTIAN: No.

21 MR. SPREHN: Asked and answered.

22 MS. THOMAS-GRIFFITH: What's your answer?

23 MS. CHRISTIAN: No.

24 MS. THOMAS-GRIFFITH: And what do you
25 understand a prudency determination to accomplish?

1 MS. CHRISTIAN: To establish that the cost
2 that were borne were made just and reasonable, based on the
3 information at that time.

4 MS. THOMAS-GRIFFITH: In connection with
5 Order No. 25 of 2015 and the additional orders in the
6 series, has the PSC ever made requests to WAPA to provide
7 additional information in connection with substantiating
8 the cost of the Vitol contract?

9 MS. CHRISTIAN: Yes.

10 MS. THOMAS-GRIFFITH: And has WAPA ever
11 responded to those requests by the Commission?

12 MS. CHRISTIAN: WAPA has responded to the
13 multiple requests --

14 MS. THOMAS-GRIFFITH: Do you have personal
15 knowledge of having participated in those responses to the
16 Commission?

17 MS. CHRISTIAN: Yes.

18 MS. THOMAS-GRIFFITH: Could you tell us how
19 WAPA would have responded?

20 MS. CHRISTIAN: In response to this particular
21 Order 25-2015, we provided a Word document, in addition to
22 a ZIP file that contained the budget for the LPG project, a
23 description of the additional activities, and a comparison
24 between the original budget and the increased cost.

25 After that was provided, we received notice from them,

1 I think it's probably in one of the subsequent orders, that
2 it wasn't detailed enough. At that time the Authority had
3 a meeting with Georgetown and their attorney, and we
4 brought down Vitol, their attorneys, and we met at the
5 Authority's executive offices so that we could find out
6 exactly what is needed by the Authority to move this
7 process forward.

8 After that was determined, we went ahead and we
9 provided to Georgetown four, 5-inch binders, we created an
10 FTP site, and we additionally provided it to them by a jump
11 drive. So there were three ways that we provided this
12 substantial information. At that time they stated that it
13 was a data dump. There was no way for them to go through
14 all that information.

15 They then asked for our board chair to attend a
16 meeting and describe if they thought it was prudent, why
17 they accepted these costs. The board chair came to the
18 PSC, and they had that meeting. Nothing was determined
19 whether it was imprudent or not. They then asked for the
20 audit, cause they said they couldn't go through all this
21 information that we provided, has an independent agency
22 said that these costs were just and reasonable. And the
23 Authority told them that we already initiated an audit of
24 the process.

25 MS. THOMAS-GRIFFITH: And is that the audit

1 that you heard discussed during this session today?

2 MS. CHRISTIAN: Yes, that is the same audit.

3 MS. THOMAS-GRIFFITH: In connection with the
4 FTP site and the binders that you described, could you tell
5 us generally what kinds of information the Authority
6 provided to the Commission in those submissions?

7 MS. CHRISTIAN: All the change orders,
8 including the justifications for the change orders, e-mails
9 between the Authority and Vitol, anything that was relating
10 to the increased costs, communication with WAPA and Vitol
11 talking about these costs, all of that was provided.
12 Anything relating to the increase of the project costs.

13 MS. THOMAS-GRIFFITH: Were there supporting
14 documentation such as justifications for the change orders,
15 receipts provided as a connection with the increased costs?

16 MS. CHRISTIAN: Yes.

17 MS. THOMAS-GRIFFITH: Now, to your knowledge,
18 has the commissioners ever provided a response to WAPA on
19 any specific line item of costs based on the increase in
20 the Vitol project?

21 MS. CHRISTIAN: No.

22 MS. THOMAS-GRIFFITH: I'd like you to take a
23 look at the orders that are before you, beginning with
24 Order 25 of 2015.

25 Were the Vitol costs approved by the WAPA board?

1 MS. CHRISTIAN: Yes.

2 HEARING EXAMINER: Which Vitol costs?

3 MS. THOMAS-GRIFFITH: The increased cost above
4 the \$87 million.

5 MS. CHRISTIAN: Yes.

6 MS. THOMAS-GRIFFITH: And just so that I am
7 clear, when I asked you earlier about the submissions in
8 the binders and the FTP site, is it the case that the
9 documentations in those submissions included supports for
10 amounts above the \$87 million?

11 MS. CHRISTIAN: Yes.

12 HEARING EXAMINER: I just want to make sure
13 I'm following. You're saying that Order No. 25.15 from
14 Docket 289 contains language that shows the approval of the
15 additional Vitol costs?

16 MS. THOMAS-GRIFFITH: No. The suggestion is
17 that none of the orders -- our contention is that none of
18 the orders that have been produced and that's in the series
19 included any assessment of these costs as a specific item.

20 HEARING EXAMINER: What was the last question
21 that was asked of Ms. Christian?

22 MS. THOMAS-GRIFFITH: Can it be read back?

23 (A portion of the record was read.)

24 HEARING EXAMINER: What was the question
25 before that? I'm sorry.

1 (A portion of the record was read.)

2 HEARING EXAMINER: Okay, continue.

3 MS. THOMAS-GRIFFITH: In connection with the
4 orders that are before you, beginning with Order 25 of
5 2015, that order relates to a specific meeting of the PSC.
6 To your knowledge, in connection with that specific order,
7 is there any determination with regards to prudence of the
8 Vitol costs?

9 MS. CHRISTIAN: No. What they said -- not a
10 determination of prudence, but they requested additional
11 information to support the increased costs, not that it was
12 determined that it was imprudent.

13 MS. THOMAS-GRIFFITH: And I'll ask you in
14 connection with that same order, was there any statement
15 made that there was disapproval of the costs based on a
16 failure to establish prudence?

17 MS. CHRISTIAN: No. What they said is that we
18 need to provide additional analysis by January 31, 2015.

19 MS. THOMAS-GRIFFITH: And so moving on to what
20 I believe is the next order --

21 HEARING EXAMINER: I'm sorry, was the analysis
22 provided by that date?

23 MS. CHRISTIAN: Yes, it was provided by
24 January 26, 2015. Which is the documents that I just
25 referred to.

1 MS. THOMAS-GRIFFITH: If you take a look at
2 Order 66 of 2015. That should be the next order with a tab
3 on it.

4 Have you seen that order before today?

5 MS. CHRISTIAN: Yes, I have.

6 MS. THOMAS-GRIFFITH: Do you have any
7 recollection of whether you were in attendance at the
8 meeting at which that order was derived?

9 MS. CHRISTIAN: I would have been.

10 MS. THOMAS-GRIFFITH: In connection with your
11 participation in that meeting and now your review of this
12 order, was there a prudency determination made of the Vitol
13 costs?

14 MS. CHRISTIAN: No, there was no determination
15 of prudency. This order was the result of the meeting that
16 I told you that took place between the Authority and Vitol
17 at the Authority's headquarters.

18 MS. THOMAS-GRIFFITH: Was there any statement
19 or order or finding in that order, 66 of 2015, at which the
20 commissioners denied recovery to WAPA of the Vitol costs on
21 the basis of a failure to establish the prudency of those
22 items?

23 MS. CHRISTIAN: No. Once again, they asked
24 for additional information, and also asked that the
25 Georgetown Consultants provide their analysis of the

1 information that we provided by January 1, 2016.

2 MS. THOMAS-GRIFFITH: Do you have any
3 recollection of whether the Authority actually received
4 such an analysis from Georgetown in response to the
5 Commission's Order 66 of 2015?

6 MS. CHRISTIAN: No.

7 MS. THOMAS-GRIFFITH: Taking your attention
8 now to the next order in the series, 56 of 2017. Do you
9 have that order before you?

10 HEARING EXAMINER: So just so we are clear,
11 all the orders we are referencing are from Docket No. 289?

12 MS. THOMAS-GRIFFITH: That's my understanding.

13 MS. CHRISTIAN: At that time the Vitol project
14 was in Docket 289.

15 What's the next?

16 MS. THOMAS-GRIFFITH: 56 of 2017, do you have
17 that order?

18 MS. CHRISTIAN: Yes, I do.

19 MS. THOMAS-GRIFFITH: That order also is the
20 result of a hearing or meeting before the commissioners on
21 a specific date.

22 Would you have been in attendance at that meeting? I
23 think the date should be on the first page of the order.

24 MS. CHRISTIAN: December 2014, yes.

25 MS. THOMAS-GRIFFITH: And in connection with

1 your attendance at the meeting and your review of this
2 order --

3 MR. SPREHN: I believe there is two errors
4 here. One, are you talking about Order 59 of 2017?

5 MS. THOMAS-GRIFFITH: No, I'm talking about
6 56 of 2017.

7 MR. SPREHN: 56 of 2017?

8 MS. THOMAS-GRIFFITH: Yes.

9 MR. SPREHN: Which is not in Docket 289. It's
10 in Docket 651. It would not have occurred in 2014.

11 HEARING EXAMINER: So let's be specific about
12 the docket numbers so the transcript is clear.

13 MS. CHRISTIAN: There are several meeting
14 dates on this. There was a meeting on December 2014.
15 There was a meeting on December 2015.

16 (Off the record.)

17 HEARING EXAMINER: We were on Docket No. 651,
18 Order 59?

19 MS. THOMAS-GRIFFITH: Order 56 of 2017.

20 Did this order address the Vitol costs?

21 MS. CHRISTIAN: No. No. This seems to
22 address the rate case and the RFM -- well, sorry. There's
23 a sentence about the Vitol costs here. Initial expenses
24 for the infrastructure of costs associated with it.

25 MS. THOMAS-GRIFFITH: What's the full sentence

1 relating to the Vitol costs?

2 MS. CHRISTIAN: It says, "Whereas, over the
3 prior several years, an increasing number of other
4 charges --

5 HEARING EXAMINER: Which page are you on?

6 MS. CHRISTIAN: The first page.

7 HEARING EXAMINER: Which paragraph?

8 MS. CHRISTIAN: The fourth paragraph.

9 "Whereas, over the prior several years an increase in
10 number of other charges were included in the LEAC in an
11 effort to reduce fuel charges, which included the Rate
12 Financing Mechanism (RFM; which itself funded a number of
13 activities including previously deferred generator
14 maintenance, spare parts procurement and lease expenses for
15 a temporary emergency generator now known as Unit 25), and
16 initial expenses for the infrastructure charges associated
17 with the Vitol project to convert generators to propane/LPG
18 and."

19 MS. THOMAS-GRIFFITH: In the section of the
20 order related to the actual ordered language, is there any
21 statement in the ordered paragraph that speaks to the Vitol
22 costs?

23 MS. CHRISTIAN: No.

24 MS. THOMAS-GRIFFITH: Taking your attention
25 then to Order 57 of 2017.

1 HEARING EXAMINER: Docket No. 651?

2 MS. CHRISTIAN: Yes.

3 MS. THOMAS-GRIFFITH: Do you know what
4 Docket 651 was?

5 MS. CHRISTIAN: The electric rate case.

6 MS. THOMAS-GRIFFITH: Did you participate in
7 the proceedings for the electric base rate case in
8 Docket 651?

9 MS. CHRISTIAN: Not the proceedings in the PSC
10 but all the background work.

11 MS. THOMAS-GRIFFITH: In connection with this
12 order, 57 of 2017, is there any language in this order
13 which addressed a prudency determination of the Vitol
14 costs?

15 MR. SPREHN: I will stipulate that language
16 isn't 578 or 59 of 2017.

17 MS. THOMAS-GRIFFITH: I thank you for that
18 stipulation. The reason we've undertaken this line of
19 questioning is because of your statements earlier in the
20 proceedings today where you identified a total of six
21 orders on the premise that they in fact addressed prudency
22 determinations.

23 MR. SPREHN: I don't believe I said that. I
24 said they addressed Vitol. I said one in particular
25 addressed prudency, that was 25-2015.

1 MS. THOMAS-GRIFFITH: Having heard the
2 stipulation from Attorney Sprehn, were you in attendance at
3 the meetings from which Orders 57, 58, and 59 were derived?

4 MS. CHRISTIAN: Yes.

5 MS. THOMAS-GRIFFITH: And in connection with
6 your participation in those meetings, did the commissioners
7 of the PSC engage in any inquiry of WAPA specific to the
8 items of cost that supported the Vitol amounts above
9 \$87 million?

10 MS. CHRISTIAN: Not particular items, but the
11 overall costs of the project, but they never addressed line
12 item by line item the increased costs.

13 MS. THOMAS-GRIFFITH: Nothing else for this
14 witness at this time.

15 HEARING EXAMINER: Attorney Sprehn.

16 CROSS-EXAMINATION

17 BY MR. SPREHN:

18 MR. SPREHN: Ms. Christian, did you or anyone
19 from WAPA in your presence specifically ask the PSC to set
20 a prudency hearing?

21 MS. CHRISTIAN: I do not recall. I do know
22 that it has been mentioned before that a prudency hearing
23 on the subject has never occurred.

24 MR. SPREHN: Mentioned by whom and when?

25 MS. CHRISTIAN: Our attorney mentioned that,

1 uhm -- I don't remember when, but I know throughout these
2 Vitol issues that was mentioned, that there has never been
3 a prudency hearing on the issue.

4 MR. SPREHN: Which attorney would that be?

5 MS. CHRISTIAN: Sam Hall.

6 MR. SPREHN: Nothing further for this witness.

7 MR. HALL: Call our next witness.

8 HEARING EXAMINER: Go ahead and call up your
9 next witness.

10 Do you have that order that appointed me?

11 MR. SPREHN: My understanding, while the order
12 of your appointment has been drafted, it has not been
13 signed and returned by the Commission Chairman.

14 HEARING EXAMINER: What is the parties'
15 position regarding the lack of a prudency hearing regarding
16 the Vitol expenses? Is that something that's supposed to
17 come within my purview?

18 MR. HALL: We submitted to legitimate costs to
19 the Authority that should be covered by a base rate
20 increase.

21 HEARING EXAMINER: What is the PSC'S position?

22 MR. SPREHN: I'm sorry, I missed part of that.

23 HEARING EXAMINER: I'm just concerned about
24 the analysis of the Vitol contracts and this whole
25 discussion about the lack of a prudency hearing. My scope

1 is very limited. And I don't believe I've been authorized
2 to conduct any type of prudency hearing or prudency
3 analysis of the Vitol expenses, although that might be
4 assumed by the fact that I am appointed this case in which
5 these expenses are being considered. So that's why I was
6 asking for the order that appointed me.

7 MR. SPREHN: I can assure you that in that
8 order there is no language addressing that question,
9 specifically anyway.

10 Our position, as PSC staff, is that WAPA has requested
11 funds for a larger amount than the 87 million, but there is
12 no evidence that was submitted in their case in chief
13 supporting an increase in the amount that has been
14 allocated or approved. So I don't know that there's -- shy
15 of what's being introduced as we are moving through this
16 hearing, there was no record in their case in chief
17 supporting an increase in the amount.

18 MR. HALL: If I may, I think that's where we
19 are right now. We haven't supported the adjustment to
20 labor costs or insurance costs or any other costs. That's
21 what a rate hearing is about, to look at the costs of the
22 utility and make a determination as to whether we support
23 our increase. And we are prepared to do that.

24 HEARING EXAMINER: Were there any discovery
25 questions sent over by the PSC to WAPA regarding details of

1 the cost associated with the Vitol contract?

2 MR. SPREHN: In this proceeding?

3 HEARING EXAMINER: In this proceeding.

4 MR. SPREHN: In this proceeding --

5 Go ahead.

6 MR. MADAN: Jamshed Madan.

7 HEARING EXAMINER: Go ahead and swear him in,
8 please, Ms. Setorie.

9 (JAMSHED MADAN,

10 having been called as a witness, was duly sworn.)

11 MR. MADAN: Good morning.

12 HEARING EXAMINER: Good morning.

13 MR. MADAN: Good afternoon.

14 I do not believe there are any specific discovery
15 questions in 678 referring to the Vitol issue. It's
16 subject to check. I'll look at my files tonight, but I do
17 not believe there are any detailed questions on the change
18 of status on information with regard to Vitol.

19 MR. SPREHN: I might, Your Honor, the previous
20 direction regarding transcripts, we will be producing those
21 this afternoon. Certainly the ones regarding these orders,
22 that we already produced those transcripts, we have already
23 identified and are copying. And those transcripts would
24 have the actual record of what was said and what was
25 required at that time.

1 We could have this discussion in so much more accurate
2 depth once those are distributed, and we have some time to
3 look at that.

4 By the way, the electronic file should be searchable
5 Adobe files.

6 HEARING EXAMINER: Okay, perfect.

7 Here is my question, and this is a difficult question
8 in the absence of the actual order that appointed me.

9 Let me go off record for a second.

10 (Off the record.)

11 HEARING EXAMINER: What is WAPA's thoughts --
12 well -- here's the issue that I have. I don't have
13 information before me to conduct a prudency analysis in
14 this base rate case. I think we can all agree on that,
15 right?

16 All this information that Ms. Christian testified to
17 as being shared with the PSC and its consultants, I don't
18 have that. And even if you gave it to me today, there is
19 just no way, based on what was described of the volume of
20 information, that I could do that.

21 So in the absence -- assuming WAPA's statement is
22 accurate that there's been no specific prudency analysis or
23 proceeding, what is the position as to my authority in this
24 base rate case to consider the Vitol -- the expenses
25 associated with the amendments to the Vitol contract?

1 MR. HALL: Our position is that those costs
2 are like any other legitimate cost of the Authority. And
3 it's your role to determine the legitimacy of the costs,
4 the amount of the costs, and whether it supports the
5 requested relief.

6 We have shared this information with the Commission.
7 We have acceded to the request for the audit. We are
8 making every effort to get that audited report to you and
9 to the Commission, but that is what happens in a base rate
10 case. And this is the first real opportunity that we are
11 going to be in a position to satisfy all of the
12 preconditions of the Commission for consideration of those
13 costs. And so we are ready to move forward on that.

14 If you need any of that information that was provided
15 on a jump drive, we will be happy to provide it. But
16 fundamentally what has not happened to date has been the
17 ability of the Authority to have its personnel come before
18 a trier of fact and explain why the Vitol costs were
19 urgent, why it was necessary to do it without the
20 engineering in advance, why it makes sense from an economic
21 point of view to do that, and that the costs that were
22 incurred were reasonable.

23 HEARING EXAMINER: Was the prudence analysis
24 or proceeding conducted with regards to the original Vitol
25 contract?

1 MR. HALL: No. It's not required to be done
2 unless there is an issue concerning prudence rates by the
3 Commission. We don't start out by --

4 HEARING EXAMINER: Do you agree with that
5 response? I mean, they were included in the rates, but
6 were they included in the rates as part of any specific
7 process wherein the PSC declared that the original Vitol
8 contract was prudent or reasonable or just?

9 MR. SPREHN: Yes, the PSC did examine the
10 numbers. They did a review, and they received staff
11 reports, they received testimony as to both the costs and
12 benefits of the project at that price and on the time
13 schedule that was originally proposed. And they found
14 that that number and that activity were both reasonable
15 and prudent. They have not found that as to additional
16 costs.

17 HEARING EXAMINER: With regards to the process
18 for the amendments to the original Vitol contract, did WAPA
19 engage in the Vitol contract with the approval of its
20 board?

21 MR. KUPFER: Yes.

22 MR. HALL: Yes.

23 HEARING EXAMINER: And then was there any
24 language in the contract or any board resolutions that
25 indicated that the contract -- that the contract was

1 somehow subject to a later ratification or process by the
2 PSC?

3 MR. HALL: The PSC doesn't have legal
4 authority to review and approve WAPA contracts.

5 HEARING EXAMINER: So then the contracts
6 became effective upon WAPA's board's approval of the
7 contract?

8 MR. HALL: Correct.

9 HEARING EXAMINER: Attorney Sprehn, so back to
10 the original question that I asked WAPA as to whether I can
11 consider the costs associated with the amendments to the
12 Vitol contract in this proceeding. What is the PSC'S
13 position on that?

14 MR. SPREHN: PSC'S position is that WAPA
15 included those sums in the rates that they are asking for.
16 They did not ask for prudence, and they did not submit any
17 supporting evidence in their testimony to support the
18 prudence of those additional sums.

19 HEARING EXAMINER: Okay, so the additional
20 sums -- so the PSC'S position is that those additional sums
21 were included in the rates?

22 MR. SPREHN: They are. They have testified
23 that they have included recovery of those sums in rates
24 that they are asking for.

25 HEARING EXAMINER: That they are asking for

1 now?

2 MR. SPREHN: Yes.

3 HEARING EXAMINER: So have they been included
4 in any prior rates?

5 MR. SPREHN: They have not. They have asked
6 for them, but they have not been included.

7 HEARING EXAMINER: All right. Go ahead with
8 your next witness.

9 MR. HALL: May I inquire before we begin
10 whether the order from the last PSC meeting has been
11 produced?

12 MR. SPREHN: It has not.

13 MR. HALL: Has it been executed?

14 MR. SPREHN: No, it has not. I'm sorry if
15 that wasn't clear. It hasn't been executed.

16 MR. HALL: Is the transcript of that hearing
17 available?

18 MR. SPREHN: I don't know the answer to that
19 question.

20 Is that the September 12th meeting?

21 MR. HALL: It sounds right.

22 HEARING EXAMINER: Is there some discussion
23 from that meeting that is relevant to this proceeding?

24 MR. HALL: The audit, the reference to the
25 audit of the extra costs that we're now seeking is part of

1 the rate relief.

2 HEARING EXAMINER: Can you find out if that
3 transcript is available?

4 MS. HENDRICKS: I can call the stenographer.
5 I know as of today, we don't have it, but I can find out.

6 HEARING EXAMINER: Do you have the transcript
7 from the PSC meeting wherein I was appointed the Hearing
8 Examiner?

9 MS. HENDRICKS: We should have that, yes.

10 HEARING EXAMINER: Can you excerpt the
11 discussion where I was appointed or where there was a
12 decision made to appoint a hearing examiner.

13 We can continue while Ms. Hendricks looks for it, or
14 do you need her?

15 MR. HALL: If she's going to be talking to the
16 stenographer, may I ask that she also ask for the ruling
17 with respect to the audit?

18 HEARING EXAMINER: If it's available. She's
19 not sure if the transcript is available.

20 If it's not available, would it be possible to get the
21 excerpt?

22 MS. HENDRICKS: Yes.

23 (Off the record.)

24 MR. HALL: May the witnesses be sworn?

25 HEARING EXAMINER: Yes.

1 (HENRY THOMAS and MURRAY HAMILTON,
2 having been called as witnesses, were sworn.)

3 DIRECT EXAMINATION

4 BY MR. HALL:

5 MR. HALL: I am going to direct my questions
6 to you, Mr. Thomas.

7 Would you state your full name for the record.

8 MR. THOMAS: Yes. Henry Lee Thomas.

9 MR. HALL: And you serve as the rate
10 consultant to the Virgin Islands Water and Power Authority?

11 MR. THOMAS: Yes, sir, I do.

12 MR. HALL: And you submitted the testimony in
13 this proceeding, prefiled testimony?

14 MR. THOMAS: Yes, we did.

15 MR. HALL: Did you do that jointly with
16 Murray Hamilton?

17 MR. THOMAS: Yes, sir.

18 MR. HALL: With respect to the testimony that
19 you submitted prior to today, do you affirm that testimony,
20 or is there any part of it you wish to change?

21 MR. THOMAS: No parts need to be changed.

22 MR. HALL: Can you tell us whether or not you
23 followed a process in preparing your testimony as you
24 attempted to determine what the rate status of the utility
25 should be?

1 MR. THOMAS: Yes, sir. So generally -- I'll
2 talk generally first, overall rate making, and then we get
3 into the specific approach we took. Generally speaking
4 when we're looking at electric utility rates, we start with
5 a determination of revenue requirements, and that's
6 typically based upon a test year. In this case that was
7 test year 2020. And in determining those revenue
8 requirements we started with the Authority's budget and
9 capital needs and plan.

10 Those revenue requirements, as been the precedent in
11 past rate cases with the Authority, are based on the cash
12 revenue requirements; so it's not an income statement or
13 accrual base accounting approach but a cash revenue
14 requirements approach. Those requirements include
15 operations and maintenance expense, debt service and
16 related coverage requirements, internally generated capital
17 are generally the basis for the cash revenue requirements.

18 From there we also then look at the revenues that the
19 existing rates are anticipated to produce, and then
20 comparing that to the revenue requirements, determine the
21 sufficiency of rates or basically the rate request. And in
22 this case, based on the amended testimony, that's the 30.4
23 million that was included in Mr. Kupfer's exhibit that he
24 presented with his introduction yesterday.

25 So what we have here today are a detailed series of

1 supporting documents and schedules that support that
2 30.4 million, as well as the rate -- proposed rates and
3 rate impacts.

4 Now, typically in electric rate case proceedings,
5 particularly for larger entities, we also look at what we
6 refer to as a cost of service study that is used to
7 allocate the revenue requirements among customer classes or
8 categories such as residential, small commercial, large
9 commercial, industrial, those types of users that tend to
10 have similar characteristics in how they use power.

11 A cost service study have not been done for the
12 Authority. There was one done in I believe 2014. I don't
13 know that there was any -- I know it was prepared by their
14 prior rate consultant. I don't know that there was any
15 hearing on those cost of service type issues that were
16 raised in that study. But other than that, in the past we
17 have applied the rate increases across the board to all
18 classes of customers on an equal percentage basis. So if
19 there is a 5 percent overall deficiency, each and every
20 charge and every customer class got the 5 percent.

21 The current rates that are in place, which were based
22 on an interim filing, we were instructed by the Commission
23 consultants to deviate from that across-the-board increase
24 in order to get support for the approval, and that
25 deviation was that we were not to apply any increase to the

1 base charges or to the first 250 kilowatt hour charge in
2 the residential class. What that did was the increased
3 revenues that were recovered through those rates all came
4 from the larger residential users and the commercial and
5 large commercial energy and demand charges.

6 So based upon the process we have gone through today,
7 and since we already made those adjustments last time with
8 respect to the rates, the current rates that we are
9 recommending that are part of the testimony, the rate
10 increase that we determined, the 30.4 million has been
11 spread proportionally to all classes of customers.

12 In addition -- and I'll go through the schedules in a
13 moment, but I also want to say, in addition, the testimony
14 addressed one new rate, a standby rate, and the
15 justification for that, and a proposal aimed at decoupling
16 rates from the sales levels because that's been a big
17 issue.

18 MR. HALL: Let's take those one by one. What
19 is the standby rate?

20 MR. THOMAS: Okay. These are pretty
21 straightforward issues. The standby rate is a rate for
22 large power customers that choose to do their own
23 self-generation, but they remain connected to the
24 Authority's grid. Therefore, when they need to take out
25 their unit for maintenance or if it's out on an emergency

1 basis, they rely upon WAPA for power.

2 Under the current process or under the current
3 practice, those customers when they do use WAPA power, just
4 revert to the standard rate for that month for their class.
5 So if they are a large demand customer, they would pay
6 large demand cost for that month, for the month they
7 actually use WAPA power.

8 The PSC consultants --

9 HEARING EXAMINER: I'm sorry, was there --

10 MR. SPREHN: I think I can save us some time
11 on this issue of standby rates. At the last Commission
12 meeting, there has been a separate docket, I believe it's
13 674, addressing what was initially called a partial
14 requirements and is now often referred to as a rooftop
15 solar tariff, and also known as, I think the public term is
16 net billing program, as well as the standby tariff that was
17 proposed here. And the Commission has in fact already
18 adopted both of those. So the standby tariff is not at
19 issue in this proceeding. It has been approved and
20 included by the Commission.

21 MR. THOMAS: And I would add that the costs
22 that went into that approved tariff are the same costs that
23 we are talking about today for the other rate classes,
24 because it was based on the same revenue requirements and
25 now since they have produced 30.4 million request.

1 MR. HALL: The second item you mentioned was
2 the decoupling of --

3 MR. THOMAS: Yes. This is a proposal that we
4 added in. There's been discussion in the past from some
5 commissioners about truing up. We felt like the biggest
6 issue, and it remains an issue based on discussions we
7 continue to have, is the sales levels. If sales come back,
8 then these deficiencies will look different. If they
9 continue to decline through the development of alternative
10 power sources for the customers and decline, again that
11 would have an impact on the rate recovery.

12 So what we propose is a decoupling mechanism, which
13 will allow periodically for the Commission and WAPA to
14 review the sales levels and revenue levels and make
15 adjustments to that to ensure that they neither over or
16 under recover their costs going forward due to a
17 significant change in sales and revenue levels. So that
18 proposal is part of that testimony.

19 MR. HALL: So if the rates don't generate the
20 revenue it's supposed to, would that decoupling mechanism
21 be a way to recoup the revenue that wasn't recouped?

22 MR. THOMAS: We wouldn't recoup what wasn't
23 recouped in prior periods when the rates were in effect,
24 but we would adjust going forward to make sure that as we
25 move forward the rates would fully recover cost based on

1 that change in sales level.

2 MR. HALL: With regard to the rate request of
3 the Authority, could you explain how you arrived at the
4 rates that you determined?

5 MR. THOMAS: Yes, sir. In prior rate cases we
6 developed a Excel base model that basically lays out the
7 rate process in a way that it's easy to update and change.
8 That model we used to develop the projected revenue
9 requirements based on the Authority's 2020 budget. We used
10 it to look at the overall coverage compliance that's part
11 of the rate need. We used it to --

12 And that model we've had a number of -- I just want to
13 point out we got a number of meetings and discussions with
14 PSC staff. They are very familiar with that structure we
15 use, and we give it to them in an executable format. And
16 as of recently as of July 30th, we went over the
17 supplemental filing we are about to make with them. Prior
18 to making the filing, we went through the model, and the
19 adjustments we made from the original filing in May to the
20 supplemental filing on August 5th. And we took the time to
21 go through that with them so they could see those
22 adjustments and be able to track it. We also prepared
23 reconciliations on the two so they could see very
24 specifically the adjustments that were being requested.

25 But that being said, the model starts out with

1 revenues and sales. It develops it by island, by class of
2 customer. And we use the most recent data to, one, come up
3 with a sales level. And as Mr. Kupfer pointed out,
4 post-hurricane we saw some recovery, and it seems to have
5 flattened off a little bit. And the sales level we use is
6 consistent with where we appear to be today on sales.

7 We then broke that down by various customer classes,
8 by customers and bills versus usage, usage over -- below 25
9 -- 250 kilowatt hours in a very detailed manner, a
10 multipage schedule that calculates the revenues under
11 existing rates.

12 Then we again developed the budgetary revenue
13 requirements, based upon O&M and capital needs. There is
14 no internal capital in these revenue requirements. So that
15 when we did the original filing, there was about
16 13.6 million I believe was the number, internal capital
17 that was taken out, as our understanding, in an effort to
18 make these rates as acceptable to the community as
19 possible. Obviously some risks there regarding that
20 exclusion of revenue requirements --

21 MR. SPREHN: I beg your indulgence. I just
22 received message that we lost our conference call.

23 HEARING EXAMINER: You need Ms. Hendricks to
24 get the person back on?

25 MR. SPREHN: We need to get back on line, if

1 we can. Take a moment to do that. I don't need any longer
2 a break than it takes to get somebody reconnected.

3 HEARING EXAMINER: And we will just repeat the
4 last question that he asked Mr. Thomas.

5 MR. SPREHN: Thank you.

6 (Off the record.)

7 HEARING EXAMINER: Can you read the last
8 question.

9 (A portion of the record was read.)

10 HEARING EXAMINER: You can pick up from there.

11 MR. THOMAS: Okay.

12 Associated with those internal capital costs. So we
13 also tested compliance with debt service coverage. I know
14 earlier there was some discussion about the requirement --
15 or the history of WAPA's procedures with rates to determine
16 a senior lien requirement coverage of 1.75. And while it's
17 not my personal opinion that that is a standard that a loan
18 should be considered when you have to look at other needs
19 for internally generating capital that might lead to a
20 different coverage, in this case there is really three
21 levels of debt.

22 There is senior lien debt. That requires a minimum
23 coverage of 1.25. That's where in the past we've targeted
24 the rates to achieve 1.75 to give a little cushion to
25 generate internal capital and to make sure that we are well

1 above the minimum, because these compliance targets are
2 minimums, and if we don't achieve them, we are in default,
3 the Authority would be in default.

4 The second is subordinate debt, and the subordinate
5 debt coverage I believe is 1.50.

6 MR. HAMILTON: 1.15.

7 MR. THOMAS: 1.15.

8 MR. HAMILTON: Minimum.

9 MR. THOMAS: Is the minimum requirement. And
10 those subordinate debts --

11 Murray, would you describe the various subordinate
12 debts.

13 MR. HAMILTON: They are bonds as well, but
14 they were issued subordinate to the senior lien bonds.

15 MR. THOMAS: And then there is finally a
16 general class of debt, and that general class of debt
17 includes the lease payments, it includes lines of credit.

18 MR. HAMILTON: And it will include at some
19 point in the future the CDL that was issued under the water
20 system.

21 MR. THOMAS: So in that coverage requirement
22 for total debt, the covenants require a minimum 1.0
23 coverage, which means we have to be able to pay our
24 operating expenses and our total debt at least at a
25 minimum. Okay. And so in this rate case, the factor that

1 is the constraining factor for the revenue requirements is
2 the total debt coverage. So the projected revenue
3 requirements at 30.4 million produce a total debt coverage
4 of 1.05. That 1.05 is above the 1.0 coverage requirement
5 for the fact that the revenue requirements include
6 \$4.88 million of revenue requirement to begin to deal with
7 the Vitol payment issues.

8 So that's the only requirement above operating
9 expenses and currently outstanding debt requirements that
10 are built into the revenue requirements. And that
11 4.8 million achieves that 1.05 coverage. So, again, while
12 the coverage is for senior lien debt and subordinate debt
13 exceed the minimum, we have to meet that total all in debt
14 coverage requirement of 1.0; so that was the constraining
15 factor.

16 From there, once we determined the revenue
17 requirements, that rate increase was just under 5 percent
18 systemwide for base rate increase. And so what we did was
19 we took that and applied those percentages to all the
20 various rate class charges, customer charges, energy
21 charges, and demand charges to determine a set of proposed
22 rates. And those proposed rates were then put into a
23 format of a rate tariff, which that rate tariff was
24 produced along with the testimony.

25 So that sequence of events, when we get into the

1 schedules, the reason that Murray is here with me today, is
2 you can see that there are 16 of these schedules with a lot
3 of these numbers. And Murray was primarily responsible for
4 the preparing of it; so if anybody has questions about
5 details, he is going to help me get into the detail numbers
6 today.

7 But, again, the testimony does include 16 exhibits,
8 which all are in support of the \$30.4 million rate increase
9 that we are requesting.

10 MR. HALL: I want to ask you what the impact
11 of the proposed rate increase would be on residential
12 customers, commercial customers, power users?

13 MR. THOMAS: Earlier you asked me if there was
14 any change from my original prefiled testimony.

15 MR. HALL: Yes.

16 MR. THOMAS: And you might recall that
17 yesterday we introduced a revised Exhibit 4. I did not
18 think of that when you asked me the question. And so there
19 was one change to that exhibit, because subsequent to the
20 filing of the prefiled testimony -- the supplemental
21 testimony, the Commission did approve a generation leased
22 surcharge of 3.0843 cents per kilowatt hour. So in the
23 schedule that shows the effective rates on 7/1/2019, which
24 is the effective date of that surcharge, which was the
25 original Exhibit 4, we've added in that.

1 So today, based upon the rates and surcharges in
2 place, the projected monthly bill -- and I am going to
3 start with the one at 400 kilowatt hours, because that
4 represents the roughly average bill that we see out there.
5 The current bill would be \$170.08 for that 400 kilowatt
6 hours. That's based on a customer charge of \$4.80, a
7 energy charge of 15.0141 cents; above 250 that's 17.6339
8 cents. And, again, the proposed rate increase it would
9 move that bill to \$178.64. That's an \$8.50 increase,
10 roughly 2.14 cents for 5 percent increase in the
11 residential bill. And that base rate does roll in the
12 generation leased surcharge into base rates there; so there
13 is no longer a generation surcharge.

14 MR. HALL: And what about the residential
15 customers that use more than 400 kilowatt hours?

16 MR. THOMAS: So again, obviously, because the
17 customer charge, when you're looking at the average cost,
18 for example, per kilowatt hour, gets spread over more and
19 more kilowatt hours, the rate impact is a percentage, looks
20 a little different, depending on your usage level.

21 But another customer level that is well within the
22 realm of reasonable usage here given the rates and the
23 situation in St. Thomas is 800 kilowatts; so if you use
24 twice as much energy at 800 kilowatts, that bill would be
25 341.85 today. And the bill at 800 kilowatt hours under the

1 proposed rates will be 359.46. That's a \$17.61 increase.
2 That increase per kilowatt hour is roughly 2.2 cents, and
3 it's a 5.2 percent increase to that larger residential
4 user's bill.

5 And if you look at Exhibit 4, the increases by
6 customer class are fairly similar for all situating
7 customers, because again the percentages were applied
8 equally to the various rate components.

9 MR. HALL: Is there anything else you'd like
10 to add to provide supplementation to your testimony?

11 MR. THOMAS: Well, I do think that, one, it's
12 critical if the Authority is going to maintain a viable
13 financial position, that we comply with our debt service
14 covenant requirements. That's absolutely critical. In the
15 event that we don't, we will be found in default. The bond
16 trustees will then be looking for WAPA's plan to alleviate
17 that default.

18 I think that when I look at the budget that was put
19 together for 2020, I think it's a very tightly developed
20 budget. I don't think there is a lot of room in there. It
21 was based upon six months of year-to-date expenses, actual
22 expenses that were available at the time that the
23 supplemental case was put together. In addition, the debt
24 service that's included in there is existing debt that is
25 in place today. So I think it's really important again

1 without this rate increase we will not meet our compliance
2 coverage task.

3 MR. HALL: Thank you.

4 I yield the witness.

5 HEARING EXAMINER: Attorney Sprehn.

6 MR. SPREHN: Thank you.

7 CROSS-EXAMINATION

8 BY MR. SPREHN:

9 MR. SPREHN: Mr. Thomas, there have been
10 three separate submissions so far in this proceeding.
11 And to provide a rough characterization, the first one
12 requested a \$55 million revenue increase, the second one
13 roughly a 40 million, and the last one a 30.4 million
14 increase; is that correct?

15 MR. THOMAS: I am not aware --

16 MR. HAMILTON: We have only filed the primary
17 and a supplement.

18 MR. SPREHN: So only the 55 million and 30.4?

19 MR. HAMILTON: That's correct.

20 Where the 40 -- I think it's 43 million came from is
21 that was a presentation made by the director where he
22 looked at the 55 million, and he had made some adjustments
23 to get to roughly 40 to 43 million. And so those were more
24 internal -- well, I should say external presentations made
25 based on that first submittal.

1 MR. THOMAS: And then the difference between
2 that presentation and the current proposal is that
3 \$13.4 million in capital.

4 MR. HAMILTON: I believe that's what it was.
5 And now from the original filing to the supplemental, you
6 know, Henry mentioned the 16 exhibits that we have, if you
7 compare those 16 exhibits to what was filed back in May,
8 you will find that they are identical. Merely we just made
9 the adjustments that we reviewed yesterday on the record
10 from Exhibit 2 that was a reduction of the
11 55 million. It was reduced by \$25 million roughly down to
12 the 30 million that we're discussing today.

13 MR. SPREHN: We are just addressing the
14 55 million and the 30 million numbers, just rounding for
15 convenience sake?

16 MR. HAMILTON: Yes.

17 MR. SPREHN: How are both of those positions
18 reasonable and prudent?

19 MR. THOMAS: Well, I believe that if it was my
20 preference that I would still be requesting the
21 55.1 million in revenue requirements because I do believe
22 that -- well, there are certain adjustments that are
23 prudent to be made; one was the renegotiated APR lease.
24 You know, there is a number of adjustments since the May
25 filing that were reasonable and taken into account. The

1 biggest one that I would like to see back in there, if we
2 could get those rates adopted, would be the deferred
3 capital projects of 13.86 million.

4 So I believe the current filing is prudent, because,
5 one, it meets compliance. I believe the -- I would
6 characterize it as let's get ourselves on a sound footing
7 so that going forward we don't continue to have costs and
8 requirements in excess of rates. And this does achieve
9 that.

10 The original request for 55 million did include a
11 number of things that were removed. I think again we could
12 make an argument that the deferred capital projects should
13 still be in there, but I think the other part of this is
14 there is an understanding on WAPA's strategy here that the
15 rates are high in the Virgin Islands. So this was an
16 attempt to limit the increase, particularly to a level that
17 we might achieve with reduced fuel costs from implementing
18 more of the generation plan so that the rate in effect
19 doesn't have an adverse effect today on the public.

20 MR. SPREHN: The understanding that rates are
21 high is a common on WAPA's part. You provide rate
22 consulting services to other utilities in the United States
23 or the Caribbean?

24 MR. THOMAS: Throughout the southeastern
25 United States, yes, sir.

1 MR. SPREHN: Are you aware of any other
2 utility in the United States or the Caribbean that has
3 increased its base rates threefold in the last decade?

4 MR. THOMAS: Electric rates?

5 MR. SPREHN: Yes.

6 MR. THOMAS: Not in the area that I practice
7 in the southeastern United States.

8 MR. SPREHN: Are you aware of it anywhere in
9 the United States?

10 MR. THOMAS: No.

11 HEARING EXAMINER: Have you examined all of
12 the utility --

13 MR. THOMAS: No, I have not. And I wouldn't
14 for this -- for purposes of this nor in my normal course of
15 business.

16 HEARING EXAMINER: Have you examined any of
17 the utility rates in other Caribbean islands?

18 MR. THOMAS: No, I have not. I will say this
19 though, the clients that I work with and the electric
20 municipal electric clients that have to compete for funding
21 with the Authority, none of them face the kind of
22 regulatory requirements that are here in the St. Thomas and
23 U.S. Virgin Islands.

24 HEARING EXAMINER: Can you explain how the
25 regulatory requirements are different?

1 MR. THOMAS: Well, let me take a client that
2 would be a significant client, the city of Jacksonville. I
3 do their water rates, but they also have an electric
4 system. They hire rate consultants, they make
5 presentations to the board of directors, and the board is
6 considered to be the final regulator in those rates. As a
7 publicly owned utility, a government instrumentality, I
8 cannot think of any client that I've ever worked with that
9 then faces state regulation. Now, there may be a few
10 states in the United States that regulate municipal rates,
11 but it's very rare.

12 And for the most part, the board -- because in many
13 cases it's a city commission or it's a utility commission
14 that's appointed by the city commission, they're presumed
15 to be not only the board making decisions over management
16 issues, but also have the same -- have the role of also
17 setting rates, and they are the regulators as well. So
18 it's quite unusual for utilities that issue revenue,
19 municipal -- tax exempt municipal revenue bonds to have a
20 regulator that is over and above or separate from their own
21 board of trustees.

22 Therefore, when I say the burden, I am talking about
23 the regulatory expense that's incurred here in St. Thomas
24 or in the U.S. Virgin Islands to regulate WAPA, that's an
25 extremely high cost, based on my experience with municipal

1 utilities.

2 HEARING EXAMINER: You can continue,
3 Attorney Sprehn.

4 MR. SPREHN: What is that cost?

5 MR. THOMAS: As I understand it, the
6 regulatory costs have been in excess of a million dollars
7 annually for WAPA. I am not sure if that's electric only
8 or electric and water, but it's very significant. The last
9 time I looked at it, it was probably back in 2014 when we
10 had the water rate case.

11 MR. SPREHN: Did you look at that issue as to
12 whether that is the docket specific rates or is it simply
13 all charges resulting from the Public Services Commission?

14 MR. THOMAS: I think the time I looked at it
15 was all charges.

16 MR. SPREHN: What are the rates at
17 Jacksonville?

18 MR. THOMAS: The electric rates in
19 Jacksonville?

20 Probably roughly around 11 to 12 cents a kilowatt
21 hour.

22 MR. SPREHN: All in?

23 MR. THOMAS: All in.

24 MR. SPREHN: So you don't have any familiarity
25 then with companies that have raised their rates by as much

1 as 15 cents in the last ten years?

2 MR. THOMAS: No, sir.

3 MR. SPREHN: Turning back to the deferred
4 capital that you identified, the 13 million, what are those
5 projects that were eliminated or deferred?

6 MR. HAMILTON: They are shown in Exhibit 10 of
7 our filing and testimony. They are seven pages of
8 Exhibit 10.

9 MR. SPREHN: Hold on for a moment, let me
10 catch up on Exhibit 10.

11 HEARING EXAMINER: You can proceed.

12 MR. SPREHN: I found the page. I am just
13 trying to get it down to a size I can see it on my screen.

14 MR. THOMAS: Understood.

15 MR. SPREHN: Exhibit 10 is seven pages long;
16 is that correct?

17 MR. HAMILTON: It is.

18 And what I'd like to do is show you the total first,
19 and then show you where the detail comes from. That way
20 you have a reference.

21 So on the final page, 7 of 7, row 190 in column fiscal
22 year 2020, you'll find the 13.876 million.

23 And this is the portion that was --

24 MR. SPREHN: I'm sorry. On page 7?

25 MR. HAMILTON: Yes. 7 of 7, row 190.

1 MR. SPREHN: Row 190?

2 MR. HAMILTON: Yes.

3 Column 2020. And you should find the amount
4 13,876,000.

5 MR. SPREHN: Yes, sir.

6 MR. HAMILTON: And so again, that was the rate
7 funded portion of this capital plan for that test year for
8 2020. And you can see there were other funding sources as
9 well, principally FEMA and HUD funding sources for that
10 particular fiscal year. But the projects that are funded
11 with the 13.8 million have the identifier as revenue
12 funded.

13 So if we start back up at page 1, at the top of
14 Schedule 10, you'll see a funding source in the middle of
15 the page, a column for funding source, and you want to
16 identify the projects that are revenue funded. And so the
17 first one that comes to mind in 2020 is on line 6.

18 MR. SPREHN: That's the item identified as
19 fuel inspection or repair compliance?

20 MR. HAMILTON: That's the first one that you
21 come to, yes, sir, the second piece of that, 2 of 2.

22 HEARING EXAMINER: You were testifying as to
23 line 6?

24 MR. SPREHN: I'm sorry?

25 HEARING EXAMINER: You were questioning

1 Mr. Thomas as to line 6?

2 MR. SPREHN: I didn't think he was finish.

3 MR. HAMILTON: If you would like us to go
4 through every project, we'll do that. But basically all
5 the projects that are identified as revenue funded on
6 Exhibit 10, Column 2020 are the identified projects, and
7 there's quite a few. I'm happy to read them out if you'd
8 like me to.

9 MR. SPREHN: Are any of the projects that are
10 deferred projects that are instrumental to the safety of
11 public or WAPA's employees?

12 MR. KUPFER: I believe you'll see probably
13 projects upgrade to the fire water protection systems in
14 both the Harley and Richmond plants on the list.

15 MR. SPREHN: That's line 17?

16 MR. KUPFER: From what I recall, those are
17 probably the largest projects in the 13 million.

18 MR. SPREHN: Are there any others you wish to
19 identify?

20 MR. THOMAS: That's safety related?

21 MR. SPREHN: Yes.

22 MR. THOMAS: I think that would be better
23 identified by Mr. Kupfer.

24 MR. KUPFER: Those are the biggest one from my
25 memory. Those are really more of an insurance issue than a

1 employee safety issue.

2 MR. SPREHN: Are there any projects that are
3 deferred that are related to system reliability or
4 efficiency?

5 MR. KUPFER: I'd have to go through the list
6 in detail. It will be helpful if Clinton was here.
7 Nothing big that really comes to mind.

8 MR. SPREHN: Are these projects that are
9 deferred for 2020 simply being rescheduled for 2021 or
10 beyond?

11 MR. KUPFER: At some point the fire water
12 system needs to be upgraded. But as Mr. Hamilton described
13 earlier, the 55 million had the budget in, then the first
14 thing we asked was an analysis of taking the capital out,
15 not assuming that interim step you referred to was about a
16 \$40 million deficit. And then we renegotiated the APR and
17 made some other adjustments with the 30.5.

18 But he described the thinking exactly correct, as I
19 said in my remarks, we made every attempt to minimize what
20 we're requesting. And we've gone through the numbers with
21 a fine-tooth comb. As Mr. Hamilton said, there is not a
22 lot of fat. As we said, capital would normally include
23 maintenance on our existing gas turbine generators and that
24 is zero; so to the extent we have to maintain those units,
25 we are going to have to figure out where we are going to

1 get that funding from.

2 MR. SPREHN: In preparing your models -- for
3 understanding here, you talk about preparing a model for
4 WAPA's revenue requirements based on a cash basis rather
5 than on a revenue or accrual. Could you describe what the
6 difference is between those two or three systems?

7 MR. THOMAS: Well, for example, in an income
8 statement approach to rate making, you would have
9 depreciation expense. And this does address at least one
10 aspect of the statutes that govern the rate regulation in
11 the islands, in the territory. So in that law, as I
12 understand it, the last time I looked at it, it refers to a
13 allowed rate of return of between 4 and --

14 MR. HAMILTON: 6 and 8.

15 MR. THOMAS: Between 6 and 8 percent, okay.
16 Well, that kind of rate making is typically done for
17 investor owned utilities where you have investors that hold
18 stock in the company, and we look at the cost to capital
19 based on a return on equity for the ability to pay
20 stockholder dividends and then the cost of capital related
21 to the average debt.

22 So in doing rates for investor owned utilities, we
23 look at income statement approach where you include
24 depreciation expense and debt -- debt interest but not
25 principal. And then you will have an allowed rate of

1 return on what is called rate based, which is the plant
2 that the utility has invested in, less depreciation. So we
3 say we got to earn a return on our depreciated plant so
4 that our rate -- our shareholders can get a return. So
5 that is typically on accrual approach.

6 When we look at an income statement and you look at
7 the net income on the bottom, it has depreciation expense.
8 Those are noncash items. Depreciation is merely the
9 amortization of the capital costs associated with plant
10 over its useful life. So when we do a cash revenue
11 requirements, that's more typical of municipal utilities.
12 And the reason we do that is because all of the compliance
13 targets in the bonds are all cash based. So these coverage
14 metrics that we talk about are all based on cash
15 statements, not on accrual statements.

16 And it's been the case for many years now, I believe,
17 that the PSC has regulated WAPA on a cash revenue
18 requirements basis and not a rate of return or accrual
19 basis.

20 MR. SPREHN: You mentioned a prior consultant.
21 When did -- I'm sorry. I've lost the name of your firm. I
22 know it's changed recently.

23 MR. THOMAS: Yes, sir, the firm is Raftelis,
24 and prior to that it was Public Resources Management Group.

25 MR. SPREHN: Is Raftelis a new company or is

1 this --

2 MR. THOMAS: Raftelis acquired Public
3 Resources Management Group as of July 1st.

4 MR. SPREHN: When did PRMG or Raftelis become
5 the rate consultant for WAPA for its electric system?

6 MR. THOMAS: For the electric system it would
7 have been concurrent with the last rate filing that we went
8 through back in 2017. So this was -- it's the second.

9 MR. HAMILTON: It was initiated in '15.

10 MR. THOMAS: Yeah, initiated in '15. So since
11 2015. Prior to that I did the water rates as well.

12 MR. SPREHN: How long had you been doing their
13 water rates?

14 MR. THOMAS: Oh gosh. I believe the first
15 case I testified to in the water rates was probably in the
16 mid 1990s.

17 MR. SPREHN: On the electric side, you talked
18 about debt service coverage. Is that a normal approach for
19 regulating the rates of the publicly owned utilities?

20 MR. THOMAS: Okay, so when we look at publicly
21 owned utility rates, and we look at coverage -- and I've
22 stated this before on the record here. We look at coverage
23 as a after-the-fact compliance test, not as a driver. So
24 that, for example, if our financial adviser tells my client
25 that they need to have 150 times coverage to be viable

1 financially, be able to access capital markets, we put
2 together the cash needs. And if those needs don't meet a
3 coverage target of one five, then we would supplement and
4 add some revenue requirements to achieve that.

5 But typically we see coverages in excess of those
6 targets, because when we're looking at cash needs for
7 municipal utilities -- let me talk about what coverage is
8 first so everybody is clear. So coverage requirement takes
9 the gross revenues of the utility less the operating
10 expenses. So that operating margin, we refer to it as
11 operating margin, is then divided by the annual debt
12 service on a cash basis, and that gives us our ratio. So
13 if an annual debt is 50 million a year, and the available
14 moneys to pay for debt is 100 million, that's a two times
15 coverage.

16 So typically when I set rates for the last 40 years of
17 my career for municipal utilities, we look at their cash
18 needs. And it doesn't make sense to assume that every
19 capital need should be financed. So there is really two
20 classes -- to major classes of costs that we look at in a
21 best practice how we should finance 'em. One are
22 expansions of the system capacity, like if you add a new
23 plant; the other is improvement -- major improvements to
24 plants. Those we typically debt fund because those
25 improvements and that expansion has a service life well

1 into the future, and it results in the lowest rates over
2 time to go ahead and finance that with debt even though
3 you're paying interest.

4 The other kind of capital expenses that we put in rate
5 revenue requirements are cash -- are capital expenses that
6 relate to what we call renewal and replacement costs. So
7 an example of that here in the islands would be the ongoing
8 replacement of lines and transformers and things, as they
9 fail, reach their useful life. And as we look at those
10 needs, if we were to -- those are ongoing needs. A
11 utility, in order to be a viable commercial enterprise,
12 needs to have ongoing reinvestment in their system to make
13 sure that the assets are kept in a useful and working
14 condition.

15 If there is a significant expense rather than --
16 expenditure rather than being expense, those are often
17 capitalized. So if we go in and do a major rehab of a
18 substation, we don't expense that, we capitalize it and we
19 update the asset record because we improved that plant and
20 extended its useful life.

21 Those ongoing expenditures that need to be made all
22 the time, it makes sense to do those on a pay as you go
23 basis and collect those moneys from each year's rates so
24 that you're not pancaking and borrowing more and more money
25 for things that if you have a need to spend \$10 million a

1 year to reinvest in your system, you don't want to
2 continually borrow \$10 million every year. So again that
3 best funding practice is approach will produce the lowest
4 rates over time.

5 So when I talk about whether coverage is typical, no.
6 I can think of in the last -- well, since I been working
7 with Murray in the last 15 years, we had one client that
8 based upon their capital plan, we added moneys to the rates
9 to achieve the coverage target they wanted. In every other
10 instance of every case I've done, the inclusion of that
11 ongoing capital reinvestment, which is not an expense, so
12 it's payable -- you have to pay the debt first in the order
13 of the flow of funds, that money in effect meets coverage.

14 The other thing that we see in municipal utilities is
15 often is those municipalities will also take a return to
16 their general fund or a dividend, if you will, from the
17 utility in that they -- by law if the pledge allows for it,
18 they can take a certain amount of money, usually it's in
19 the range of a few percent of revenues each year and use it
20 to fund other municipal needs. Those moneys again you
21 cannot take that money out of the utility unless you first
22 pay debt. So those also contribute to achieving coverage.
23 But typically we don't set rates on coverage, we set it on
24 those cash needs, but then we test to make sure we meet
25 coverage.

1 MR. SPREHN: I believe you stated earlier that
2 you understood that the Public Services Commission here set
3 a 1.75 coverage for senior debt as a target. Is that your
4 understanding?

5 MR. THOMAS: I know that's what we did with
6 the rate case with the water system, and I believe the
7 electric case at that time. So I think that's been the
8 standard that's used. I do believe though there's been
9 significant subordinate and general debt since then that
10 has made those other coverages more important than the
11 senior coverage. In other words, if you set the rates
12 today at a senior coverage of 1.75, they would not meet the
13 other covenant tests in the rates that we have to meet.

14 MR. HAMILTON: If I could add, in the last
15 rate case, the rates that are in place today were initially
16 interim rates, interim rates that were calculated on a
17 senior and junior debt service coverage ratio of
18 150 percent, okay, because the 1.75 wasn't adequate to even
19 meet the junior lien pledge. So the parties agreed in the
20 stipulation to the 150 senior lien and junior lien coverage
21 in order to get those interim rates in place. Again, that
22 was in February of 2017.

23 Subsequent to that, once WAPA filed its permanent
24 case, which ultimately was not heard, the Commission made
25 the interim rates permanent July 1st of that same year.

1 And so the current rates today are based on a --

2 MR. THOMAS: 150 senior and subordinate.

3 MR. HAMILTON: That's right. Which by itself
4 now would not be adequate to meet -- if that was the test,
5 would not be adequate to meet the 1.0 coverage of the all
6 in debt test now that we also have the remaining general
7 fund debt.

8 MR. SPREHN: We've heard a lot of testimony
9 this week regarding WAPA's loss of sales which would affect
10 the coverage ratio because revenues would have declined.
11 Has WAPA also increased its debt in the last three years?

12 MR. HAMILTON: The answer is yes. Again, this
13 is in reference to Mr. Kupfer's Table 1 in his exhibit, the
14 summary of revenues and expenses. He provided a
15 reconciliation from the last rate case, 2017. Again, that
16 was the basis for the interim rates which became permanent.
17 That was based on an annual sales level of 640 --

18 MR. SPREHN: Can I ask you to hold on for a
19 moment there?

20 You are referring to Exhibit 1 attached to
21 Mr. Kupfer's testimony?

22 MR. HAMILTON: It was Table 1 of Mr. Kupfer's
23 testimony.

24 MR. SPREHN: Let me join you in that table and
25 we will proceed.

1 I do not have that table handy in my scanned documents
2 here. You have a spare copy of that page?

3 MR. KUPFER: Is the question still related to
4 debt issued over the last three years?

5 MR. SPREHN: Yes.

6 We got the exhibit here.

7 MR. KUPFER: I'm not sure that exhibit covers
8 debt.

9 MR. HAMILTON: There is a debt service line
10 here.

11 MR. KUPFER: It covers debt payment. I think
12 you're talking about issuance of debts.

13 With the 2017-A BAN, which \$15 million for the
14 Wartsila first three units, the 2018-A, B or C, about
15 \$17 million for CDL BANs that are electric. And then
16 during this time the auditors made a determination that the
17 Vitrol lien should be capitalized, and it's carried now as
18 essentially unsecured debt.

19 The streetlight, I'm not sure when the streetlight
20 financing was done, roughly a 35 million.

21 MR. HAMILTON: It's not in our test year. It
22 got moved out with the adjustment.

23 MR. KUPFER: When was the initial financing
24 done?

25 MR. THOMAS: 2018.

1 MS. CHRISTIAN: 2016 by streetlights.

2 MR. THOMAS: That's the refinancing.

3 MR. SPREHN: Is there a chart or table that
4 shows the total debt issuance since the conclusion of I
5 want to say Docket 612, the 2013, '14 rate case?

6 MR. HAMILTON: Not in our testimony, no, sir.

7 MR. SPREHN: Do any of your revenue
8 calculations -- I guess the correct way of phrasing, your
9 revenue requirement calculations, that's the proper term?

10 MR. THOMAS: Yes.

11 MR. SPREHN: Do your revenue requirements
12 calculations address needs beyond the year 2020?

13 MR. HAMILTON: No, not in the supplemental
14 filing.

15 MR. SPREHN: Did they in the original filing?

16 MR. HAMILTON: In the original filing we did,
17 yes.

18 MR. THOMAS: The revenue requirements that we
19 were asking did not reflect it, but we showed a forecast of
20 the two subsequent years to the test year.

21 MR. SPREHN: And those two subsequent years at
22 the higher rate, did it meet the coverage requirements?

23 MR. HAMILTON: Yes, it exceeded the coverage
24 requirements, yes, because of the capital needs
25 identified --

1 MR. SPREHN: But only in the higher rate?

2 MR. HAMILTON: Only at the 55 million. It
3 exceeded it again in order to provide adequate funding to
4 meet the cash needs identified in that capital plan that we
5 reviewed earlier.

6 MR. THOMAS: Prior to the adjustment.

7 MR. HAMILTON: That's right, prior to the
8 adjustment.

9 MR. SPREHN: What do you understand to be the
10 definition of solvency for a corporation?

11 MR. THOMAS: I think it's basically the
12 ability to pay your bills.

13 MR. SPREHN: Is WAPA solvent?

14 MR. THOMAS: Not without this base rate
15 increase they aren't. And, you know, again, I know we
16 discussed numerous liabilities that are out there, but what
17 this does produce is solvency on a going forward basis. In
18 other words, they should be solvent with these increases in
19 2020, and that's basically the only conclusion we could
20 make at this point.

21 MR. SPREHN: Is that they would be solvent in
22 2020?

23 MR. THOMAS: Yes, sir, for that test year.

24 So one of the other things that to address the
25 tightness of this is that the other thing in the past that

1 and particularly on the water side we requested is we've
2 never been able to get in the rate revenue requirements to
3 build up a significant amount of working capital. So the
4 -- while this will make them solvent, I think in order for
5 WAPA to be truly sound, we have to get to a point in the
6 future, where not only are we solvent on a year-to-year
7 basis, but we have a significant fund of working capital
8 for emergencies and contingencies so that we are not always
9 operating right on the edge of insolvency in terms of being
10 able to meet our cash needs.

11 MR. SPREHN: Do you have any other clients
12 whose bond ratings are as low as WAPA's?

13 MR. THOMAS: No.

14 MR. SPREHN: You have any other clients that
15 ever had a bond rating suspended for failure to provide
16 information?

17 MR. THOMAS: No.

18 MR. SPREHN: You talked at some length in your
19 direct regarding decoupling. Decoupling being a mechanism
20 to adjust rates?

21 MR. THOMAS: Yes, it's in effect a true up.

22 HEARING EXAMINER: I'm sorry, it's in effect a
23 what?

24 MR. THOMAS: A true up.

25 The way we developed that decoupling formula would be

1 to, after the fact, to look at what actual sales are. And,
2 again, if those sales increase over what was in the test
3 year, we could then make an adjustment accordingly. If the
4 sales were lower by a significant amount, we could true up
5 so that the rates in the next year acknowledge that trend.

6 MR. SPREHN: By a true up, if rates were -- if
7 sales were above forecast, you would be decreasing rates;
8 is that correct?

9 MR. THOMAS: Theoretically, yes.

10 MR. SPREHN: If sales are below the rate, the
11 remaining customers would see an increase?

12 MR. THOMAS: We would request to adjust so
13 that we can again maintain solvency.

14 MR. SPREHN: And are you proposing that as an
15 automatic mechanism or one that require --

16 MR. THOMAS: No, it would be subject to PSC
17 review.

18 I will say that many municipal utility clients do have
19 automatic adjustment clauses built into their rates, so
20 that again to only have to periodically do a full -- a full
21 review of rate needs. So we see many utilities that have
22 inflation adjustment clauses that allow for small
23 incremental changes year over year. Because again if you
24 assume you want to give employees wage increases and things
25 of that nature, you have to maintain your operating margins

1 and your viability. Unless you want to reset the rates
2 every year and do a full blown analysis, it's a useful tool
3 that some utilities use to automatically adjust rates; but
4 that's not what our proposal is?

5 HEARING EXAMINER: What triggers the automatic
6 adjustments as far as --

7 MR. THOMAS: The rate of inflation. And the
8 staff in those cases would make a request to the local --
9 to the commission to say based upon last year's inflation
10 factor, we recommend an adjustment of 1.57 percent, and
11 they tie it oftentimes to the consumer price index in their
12 region of the country. But, again, that's -- you don't see
13 that as typically in electric rates as you do in other
14 utility rates, because there has been at least on the
15 stateside a fair amount of stability in electric rates.

16 MR. SPREHN: In your direct testimony you
17 talked about the inclusion of 4. -- I believe it was
18 4.8 million to begin to deal with Vitol payments I believe
19 is the phrase you used.

20 MR. THOMAS: Yes.

21 MR. SPREHN: Where is that in your
22 presentation?

23 MR. HAMILTON: In the exhibit, Exhibit 2.
24 These were the adjustments we reviewed yesterday, and so it
25 will be shown on page 2 of Exhibit 2.

1 MR. SPREHN: I'm going to get there.

2 MR. HAMILTON: Yes, sir.

3 MR. SPREHN: Please proceed with your answer.

4 MR. HAMILTON: Yes, sir.

5 On page 2 of Exhibit 2, if you look at line 30. And
6 please ignore the fact that I have two line 30s. But the
7 one that says 4.8 million. You can see it was an add back,
8 if you will. The adjustments were deductions from the
9 \$55 million rate increase. We are adding back 4.8 million
10 for the Vitol.

11 As I understand that adjustment, as part of the
12 settlement arrangement with Vitol, Vitol requested an
13 additional monthly payment of one and a half million
14 dollars to cover past due infrastructure payments. And
15 staff is requesting that we put 27 percent of that
16 arrearage or approximately \$400,000 per month in the
17 requested base rate increase. And that's what accounted
18 for that adjustment of 4.8 million.

19 MR. KUPFER: That's correct. \$400,000 is the
20 number, which is approximately the 27 percent, but that's
21 what we built in.

22 MR. SPREHN: I'm sorry, as I read this -- you
23 probably don't want to walk away yet.

24 The Vitol line here says 1.5 million per month funded,
25 and then it says funded .04 million per month. I don't

1 understand that distinction.

2 MR. HAMILTON: It's a typo.

3 MR. KUPFER: .4.

4 HEARING EXAMINER: What should it be?

5 MR. KUPFER: .4.

6 MR. HAMILTON: It should read Vitol

7 1.5 million per year --

8 MR. KUPFER: No, per month.

9 MR. HAMILTON: I'm sorry, it is per month.

10 MR. KUPFER: Yes, of which we set 400,000 --

11 MR. HAMILTON: We funded 400,000.

12 MR. KUPFER: Per month. 12 times 400,000 is

13 4.8.

14 MR. SPREHN: So what does the 1.5 million per
15 month refer to? Is that the request per payment or --

16 MR. KUPFER: No, that's the arrearage payments
17 that we have agreed to make.

18 MR. SPREHN: Okay, so where does the other
19 1.1 million --

20 MR. KUPFER: We are working with the GVI to
21 come up with that balance.

22 MR. SPREHN: Has the GVI committed to that
23 funding as yet?

24 MR. KUPFER: They did for September, and we
25 are working with them for October.

1 MR. SPREHN: They have not made a long-term
2 commitment at this point to make these payments on an
3 ongoing basis?

4 MR. KUPFER: Right now we're working on four
5 months is what the discussion for finance is.

6 HEARING EXAMINER: GVI paid 1.5 million in
7 September?

8 MR. KUPFER: It was originally 5 times 1.5.
9 Now the agreement is 4 times 1.875, but it's still the same
10 overall number. And we didn't think it was right to put
11 all that into the ratepayers, and that's why we are working
12 with GVI to sort it out.

13 MR. SPREHN: Thank you.

14 I think if I can have a couple of minutes to consult
15 with my people before I give up my cross-examination.

16 HEARING EXAMINER: Sure, we will take a five
17 minute break.

18 MR. SPREHN: Thank you.

19 (A recess was taken at this time.)

20 HEARING EXAMINER: You have additional
21 cross-examination?

22 MR. SPREHN: I do not. We yield the witness.

23 HEARING EXAMINER: Is there redirect?

24 MR. HALL: No questions.

25 MR. SPREHN: If I may, in response to your

1 request regarding the ratification of your contract and
2 appointment as Hearing Examiner, we have secured pages of
3 the transcript.

4 HEARING EXAMINER: Okay, great.

5 MR. SPREHN: We also secured a copy of the
6 agenda on that because there is reference to the agenda
7 item, so that it would be easier. And we are providing you
8 and Mr. Hall both.

9 We have also recovered from the June 12th meeting, a
10 copy of that agenda, a section of the transcript that
11 adjusted the Vitol audit discussion.

12 Do we need to mark these as your Hearing Examiner
13 exhibits?

14 HEARING EXAMINER: Yes. I think we are
15 Hearing Examiner 4. So 4 will be my appointment, and 5
16 will be the June meeting that includes the discussion about
17 the audit.

18 (Excerpt from July 31, 2019, PSC Board Meeting
19 Transcript Regarding Ratification of the Hearing
20 Examiner was marked as Hearing Examiner's Exhibit 4
21 for identification.)

22 (Excerpt from June 12, 2019, PSC Board Meeting
23 Transcript Regarding Vitol Audit Discussion was marked
24 as Hearing Examiner's Exhibit 5 for identification.)

25 MR. SPREHN: 4 will be the one on her

1 appointment, and that will include the July 31st agenda.

2 And No. 5 with the June 12th Vitol audit discussion.

3 Do I understand that was WAPA's last witness?

4 MR. HALL: Yes. We rest.

5 HEARING EXAMINER: That's your last witness?

6 MR. HALL: That is our last witness.

7 MR. SPREHN: While we agreed that we will work
8 until 5:00 today, we certainly intended to, I think it will
9 probably be to the benefit of all parties here if we put
10 Mr. Madan on in the morning so that we can have his
11 rebuttal as concise and coherent as possible, rather than
12 starting today, consuming the balance of the two hours.

13 HEARING EXAMINER: Let me ask this: Is that
14 your only witness, Mr. Madan?

15 MR. SPREHN: It is indeed.

16 HEARING EXAMINER: How much direct testimony
17 do you anticipate?

18 MR. SPREHN: I think direct probably 30 to
19 45 minutes, if I have time to get it neatly organized. If
20 I have to do it off the cuff here, then I will probably
21 take up the rest of the afternoon.

22 MR. HALL: Our problem, Mr. Kupfer has a board
23 meeting tomorrow morning.

24 HEARING EXAMINER: And you want him here for
25 Mr. Madan's testimony?

1 MR. HALL: I would like him here.

2 HEARING EXAMINER: What time is the board
3 meeting expected to end?

4 MR. KUPFER: 9:30.

5 MR. HALL: It starts at 9:30.

6 MR. RHYMER: We don't know.

7 HEARING EXAMINER: Are your board meetings all
8 day long?

9 MS. FARRINGTON: They have typically gone up
10 until 2:30 in the afternoon. It could be anywhere between
11 1:30 and 2:30.

12 HEARING EXAMINER: Are people traveling for
13 this board meeting? You have board members traveling for
14 this meeting?

15 MS. FARRINGTON: They do video conference.
16 Most of them stay at their own districts and appear video
17 conference.

18 HEARING EXAMINER: How long you anticipate
19 your cross-examine would be?

20 MR. HALL: Depends on the direct. But I would
21 suggest that we could break for 20 minutes, he could
22 organize his thoughts, and go as far as we can today.

23 HEARING EXAMINER: Do you anticipate -- as you
24 sit here now, you anticipate your cross-examine --

25 MR. HALL: I don't know what he's going to say

1 because I haven't seen prefiled testimony, but typically my
2 cross-examinations tend to be short.

3 HEARING EXAMINER: Should we start at 8:00?

4 MR. SPREHN: I could start at 8:00. If we
5 start at 8:00, we will be done by 9:30.

6 HEARING EXAMINER: Will Mr. Kupfer be here or
7 in St. Croix?

8 MR. HALL: In St. Croix.

9 HEARING EXAMINER: I mean, it's 3:15. If your
10 direct is 45 minutes, why don't we resume at 3:45 or
11 4:00 p.m.

12 MR. SPREHN: How about 4:00 p.m.?

13 HEARING EXAMINER: Can you do that?

14 MR. SPREHN: We will make it work.

15 MR. KUPFER: I have a flight back to St. Croix
16 this afternoon at 5:00, so I've got to be back --

17 MR. SPREHN: You're out of here 4 o'clock
18 anyway.

19 MR. KUPFER: Yes.

20 MR. SPREHN: I wish I had videoconferencing
21 that I can offer to use tomorrow, but our videoconferencing
22 seems to be somewhat ineffective in the --

23 MR. KUPFER: I can call in. I know what you
24 guys look like.

25 MR. SPREHN: We certainly will make the call

1 in number available. We can start at 8:00 tomorrow and you
2 can call in?

3 MR. KUPFER: That will be fine, yes.

4 HEARING EXAMINER: Why don't we start at
5 4:00 p.m. today, and then if we need --

6 MR. SPREHN: He wouldn't be available at
7 4:00 p.m.; he's flying out at 5:00.

8 HEARING EXAMINER: I'm sorry, so he's leaving
9 now.

10 MR. KUPFER: I can call and listen from the
11 airport.

12 HEARING EXAMINER: So why don't we start at
13 4:00, and resume at 4:00 p.m., and then if we are not
14 finished by 5:30, we resume at 8:00 a.m. so that Mr. Kupfer
15 could attend by phone and still make his 9:30 a.m. board
16 meeting.

17 Will that work for everyone? We will recess until
18 4:00.

19 (A recess was taken at this time.)

20 HEARING EXAMINER: Let's go ahead and get
21 started.

22 MR. SPREHN: I guess one quick administrative
23 matter. While we were out, I received an e-mail from
24 Attorney Hall regarding a motion on the Vitol audit, but we
25 have produced the transcript.

1 MR. HALL: I thought -- it was my supplemental
2 for that. You gave the wording for the order, which most
3 of it was redacted.

4 MR. SPREHN: I just forwarded what I
5 understood to be the wording from a motion from in an
6 e-mail. You have the actual transcript, which will be the
7 better evidence in the record.

8 MR. HALL: I haven't seen the transcript. I
9 have it. I just wasn't finding it.

10 MR. SPREHN: I think the point is moot.

11 HEARING EXAMINER: I will look at the e-mail,
12 and I will just respond.

13 MR. SPREHN: Good afternoon. The Commission
14 would like to present Mr. Jim Madan as our sole rebuttal
15 witness.

16 DIRECT EXAMINATION

17 BY MR. SPREHN:

18 MR. SPREHN: Mr. Madan, do you have some
19 testimony you would like to provide?

20 MR. MADAN: Yes, I would. Thank you.

21 HEARING EXAMINER: Is the testimony written?
22 Are those your notes?

23 MR. MADAN: It's largely written, and there
24 are notes all over it.

25 HEARING EXAMINER: Okay, go ahead.

1 MR. MADAN: I'll try and compress based on
2 what we heard today, and that's what we were doing just a
3 few minutes ago.

4 This presentation has been prepared to provide
5 rebuttal testimony for the ongoing base rate case,
6 Docket 678, and the continuing LEAC proceeding, Docket 289,
7 for Commission review and consideration in their
8 deliberations during the meeting scheduled later on in the
9 year. This report combines both Dockets 678 and 289
10 because, as we understand it, WAPA is seeking simultaneous
11 action in both dockets; and as such, on base rates had been
12 intertwined with the LEAC adjustments by WAPA.

13 There are several documents that had been filed in
14 this -- several documents filed in this docket as
15 representing WAPA's current position. WAPA has modified
16 its original request by subsequent petitions, but WAPA had
17 not till recently filed a modification to the original
18 petition in Docket 678. An official amended petition
19 combining actions was filed on August 5, 2019.

20 We also understand from the PSC Executive Director and
21 counsel that the Commission has directed its public
22 comments at recent meetings, that the PSC must concurrently
23 complete the base rate investigation mandated by the
24 Virgin Islands Code, that by statute requires occurring no
25 less than once every five years. The statutorily mandated

1 rate investigation is now overdue.

2 I am going to talk about the background of 678. On
3 May 19th the Virgin Islands Water and Power Authority
4 submitted an initial petition to the Virgin Islands
5 Public Services Commission for electric system rates relief
6 for changes in base rates to be applied to all bills
7 rendered on and after July 1, 2019. A request for
8 expedited action with supporting testimony and documents
9 was filed requesting an adjustment to base rates to provide
10 an additional \$55.1 million. To meet the cost of
11 operations, meet certain capital requirements and provide
12 for debt service coverage for WAPA's outstanding bonds and
13 other liabilities.

14 Based on the projected kilowatt hour sales, the
15 average cost per kilowatt hour equated to almost 49 cents,
16 including LEAC. This filing has never really moved
17 forward. WAPA's subsequent filings seemed to have made
18 this filing moot, but it has not been withdrawn.

19 The three filings were approximately in the sequence,
20 and I talk about them later in my testimony. There was an
21 original filing for \$55 million approximately. There was a
22 second filing that was made for just over \$40 million, 41,
23 \$44 million. And when that happened WAPA received the
24 notice of default from Vitol, and at that time again made a
25 presentation. After having discussed it internally with

1 WAPA and other government officials, made a presentation to
2 the Public Services Commission. And this third filing is
3 the one that is presented at approximately \$30.4 million.
4 That's the filing that's before us now.

5 The one thing I'll talk about now briefly and later on
6 again, it appears to us that most of these changes that
7 were made to bring the \$55 million down to the \$30 million
8 were known or could have been known at the time of the
9 original filing. And it's really troubling, if that's
10 true, why these changes were not made at the time of the
11 original filing.

12 I think WAPA has the responsibility if they know of
13 these changes and the fact that it could be done, and the
14 resulting rates are just and prudent, that those filings
15 should have been made at the time of the original filing.
16 There's no excuse that it be made only because WAPA
17 receives a notice of default. It just makes no sense.

18 HEARING EXAMINER: You're saying the change
19 from the 55 to the 30.4 million was made because they
20 received a notice of default, WAPA received a notice of
21 default?

22 MR. MADAN: Yes, very clearly that's what they
23 said. They got the notice of default; they came up with a
24 plan that came up with the 30 million, a plan that went
25 further, talked about subsequent rate decreases. It

1 sounded like they were making a commitment to it. Of
2 course for the last two days we've now heard it's not a
3 commitment that WAPA --

4 HEARING EXAMINER: But how does the notice of
5 default call WAPA to need less revenue or request less
6 revenue?

7 MR. MADAN: Why? I can only speculate on
8 that, but I can give you my opinion, and my opinion is that
9 that notice of default is pretty serious. It requires a
10 substantial amount of payment. And if that notice of
11 default is not satisfied in some reasonable way, WAPA, as
12 an institution, will be in default, and that will be a
13 serious issue.

14 HEARING EXAMINER: But you are saying that
15 they initially requested 55, and they requested a little
16 more than --

17 MR. MADAN: 40.

18 HEARING EXAMINER: -- 40 and then 30.4, and
19 the reason for the reduction is because they received the
20 notice of default?

21 MR. MADAN: The reason is a combination of
22 things. The reason is they had to come and sell a package
23 that's acceptable that would be approved by the regulatory
24 body.

25 HEARING EXAMINER: When did WAPA, if you know,

1 receive the additional funding from the central government,
2 the funding from the Medicaid funds, and then I believe
3 there was testimony earlier --

4 MR. MADAN: Subsequent to the notice of
5 default.

6 HEARING EXAMINER: Right, but did they receive
7 that funding prior to the third filing? Do you know? The
8 filing for 30 --

9 MR. MADAN: No, they were talking to us when
10 they made the presentation. They had already made the
11 presentation to -- internally had been approved, it went to
12 government officials to sell the program, and then they
13 came to the PSC and said here's the program and here's what
14 we want. And in order to do this, we think we're going to
15 get the following funds; we think we are going to get the
16 \$20 million to solve the immediate issue; we're going to
17 get these funds from here and these funds from here.
18 That's the presentation they made to us. So it
19 was --

20 HEARING EXAMINER: I guess I'm missing -- I'm
21 missing the connection. To me if you are issued a notice
22 of default, that would not result in you needing less
23 revenue. I would think it would result in you needing
24 more. So I guess I'm missing something in how we get to
25 that conclusion. Maybe it's just me that's missing it.

1 MR. MADAN: No. No. It's a complicated
2 issue. If you look at the notice of default, and I have it
3 summarized somewhere I think on -- I'm just going to get to
4 it, it's substantial amount of money that has to be made.
5 So if --

6 HEARING EXAMINER: So why would that result in
7 WAPA requesting less --

8 MR. MADAN: I'm trying to explain it.

9 HEARING EXAMINER: Okay.

10 MR. MADAN: There is this substantial amount
11 of money, which if the only solution was to pay for its
12 rates, you're absolutely right, would have resulted in a
13 very substantial increase in rates. If you have to pay a
14 \$20 million down payment, and you got to pay \$2.5 million a
15 month to bring up these arrears and bring up other arrears,
16 pay for your fuel, et cetera, so you come with a plan that
17 says it's an emergency, this has to get approved quickly.
18 We'll take care of all of this if you approve this plan.

19 And so they came and they said, this plan keeps rates
20 where they are, and we're going to do it by making the
21 generation surcharge permanent, increasing base rates by
22 3 cents and reducing the LEAC by 3 cents. That's the plan,
23 rates will, quote, be the same because all this deferred
24 fuel that we have to collect, we'll agree to defer it and
25 collect it later at some point. When that bill will come

1 due, we're not sure. And in exchange the government is
2 going to pay the \$20 million. We are going to get the
3 \$2.5 million in progress payment from working with the
4 government, as you heard today, working on September,
5 October, November.

6 So they made a plan that said here is a very
7 acceptable plan, keep rates the same, quote/unquote, the
8 same by deferring fuel, and we'll take care of this notice
9 of default. And while we're doing it, please give us the
10 authority when we get this to go ahead and try and make a
11 deal to acquire Vitol. So that's the deal as was presented
12 to the PSC.

13 HEARING EXAMINER: Okay.

14 MR. MADAN: I don't know if that helps.

15 HEARING EXAMINER: I'm still missing
16 something, but I think maybe it will become clearer to me
17 as we continue.

18 MR. MADAN: Okay.

19 So the emergency relief is the issue we were just
20 talking about, and the demands that were made by Vitol in
21 its default notice substantial. It had an immediate
22 payment of \$20 million towards the accrued infrastructure
23 costs. It had a \$2.6 million monthly infrastructure
24 payment to repay the \$160 million of infrastructure costs,
25 \$670,000 in monthly O&M costs, \$8 million a year.

1 It had one and a half million dollars in additional
2 payments beginning August of 2'19 to reduce arrears, which
3 are allegedly to be approximately 76 million. And one
4 million a month of increased payments, increasing to two
5 and a half million beginning in January of 2020, addressing
6 the accrued arrearage. And, finally, all propane
7 deliveries for the actual fuel were to be prepaid until all
8 the arrears and interest are paid in full.

9 We understand that WAPA has made the initial payment
10 of the \$20 million, as well as the initial infrastructure
11 payment. As far as we know, there's no certainty that all
12 the additional payments demanded by Vitol have been or can
13 be made.

14 In the emergency filing WAPA has proposed an amended
15 base rate proposal that reduces the initial request. And I
16 think we just went through that. Basically the proposal is
17 to reduce the rate increase to remove the base rate funded
18 for capital items by 13.8 million. WAPA's consultants have
19 testified to that. This reduces the May request to
20 \$41.3 million. And we just starting point for the
21 requested increase of 7.67 cents from the approximate
22 10.5 cents that was in the original \$55 million filing.

23 WAPA then made several additional adjustments to
24 reduce the amount of the requested increase. In summary,
25 the adjustments, which have been accepted at face value for

1 discussion purposes, are as follows. And they have several
2 line items, and these are the adjustments that they went in
3 and looked at the original filing and they said they were
4 going to do.

5 They were going to reduce major maintenance. These
6 are maintenance on their generating plants, as Mr. Kupfer
7 testified. There was a change in the way that Wartsila was
8 going to be funding. There was a change in 2003-A
9 refunding Ambac bonds. There was a change in the senior
10 debt adjustment. There was a reserve calculation that was
11 put into the calculation of \$5 million.

12 And with all of that, there was going to be a net
13 proposed reduction of 2 cents from the original filing,
14 that the adjusted base rate request would be up by
15 5.86 cents, and the lease costs that were going to be
16 removed would -- which were going to be made a permanent of
17 3.8 cents -- 3.08 cents, keeping the rates approximately
18 where they are today at 43 cents.

19 In those presentations to the Public Services
20 Commission, there were additionally representations, I
21 guess is the best word, and those appear to be fluctuating.
22 We had a presentation, and those are the same presentations
23 used at Government House indicating that in
24 December 31, 2019, they would be able to achieve a
25 1.79 cent reduction due to the refinancing of the Vitol

1 contract. That this morning seems to be pushed out to June
2 of next year.

3 The decrease from the LEAC for more efficient
4 operations from the new units would be 5.31 cents. That
5 was December of 2020. There would be a decrease at the
6 time the new Wartsila units were put in, also 2020,
7 1.99 cents, resulting in a net decrease of 9.09 cents a
8 kilowatt hour, and the approximate rate will drop from
9 approximately 43 cents today to 33 cents a year from now.

10 Those numbers seem to be influx. We already know that
11 the Vitol refinancing is talking about June of next year
12 for the first tranche with the private enterprise. And the
13 HUD financing is at some point in the future currently
14 being described as maybe two years beyond the initial
15 refinancing date.

16 So just to be clear, what's in the rates today is
17 6 cents for the infrastructure piece of the Vitol contract
18 for five years. That's what the PSC has approved. The
19 current proposal that's included in the 31 -- in the
20 \$30.4 million increase proposal is 6 cents now for
21 10 years. And the refinancing appears to be approximately
22 4 cents for 20 years. So that's the economics.

23 There's nothing being submitted on the economics of
24 it, on the profitability on it, because the net benefit.
25 Obviously the survival and the availability of propane is

1 critical. When this was first presented to the Commission,
2 it was presented as a 30 percent reduction in your bill.
3 And then it got clarified to being it's a 30 percent
4 reduction in your LEAC bill. And to date none of that has
5 come to past. So these are the numbers in terms of what is
6 being proposed with regard to this Vitol contract, which is
7 really the heart of this application, and the default
8 notice that seems to have driven the application.

9 The LEAC filing is under review. And I don't think
10 that it requires a whole lot of presentation. The current
11 rate is approximately 19 cents, 19.23 cents. The LEAC
12 filings have initially proposed that the rate is going to
13 be approximately 23 cents. It has not been ruled on by the
14 Commission. There are open issues within those filings
15 that are not entirely relevant here.

16 There was an update based on updated information as to
17 generation that was available, and that 19.23 cents is now
18 being changed to 22 cents instead of 23 cents. And that's
19 before the Commission. There's been no ruling on that yet.

20 The 19 cents continues. It's higher than the current
21 cost of production. And what that means is that the
22 19 cents produces an over recovery, which is bringing down
23 the deferred fuel balance. And by the end of the year, I
24 think we seen numbers that take the deferred fuel balance
25 down into the \$20 million range.

1 There is some discussion on the accounting between
2 WAPA and the staff as to whether the CDL loans, which WAPA
3 has agreed need to be applied against those deferred
4 balances, are being accounted for. And a final
5 reconciliation of that number still has to take place and
6 it hasn't.

7 The reason the LEAC is in here in this discussion at
8 all is because it's linked with that 3 cent reduction,
9 which will take the 19.3 down to 16.3 or 16.6, and that
10 provides rates being approximately where they are today.
11 That's critical to make this whole thing work.

12 In terms of the presentation that was made by
13 Mr. Kupfer, I'd first like to talk a little bit about the
14 issue of accounting and regulatory accounting and the fact
15 that Mr. Kupfer thought that PSC has not provided for Vitol
16 costs to be included in base rates. I think that's
17 incorrect, and is a reading that's not in keeping with
18 regulatory accounting and just general regulatory practice.
19 It's different from somebody that's been in private
20 competitive industries, the accounting is different.

21 The basic difference is that in general, if you're not
22 a regulated firm, and you have an expense, you have a rent
23 expense, you have the power expense, you have any kind of
24 expense, that expense, when you put it on your books, may
25 or may not affect your price. You put it on your books,

1 you have a competitive situation, you look at what your
2 competition is doing. It impacts your price in the sense
3 that overall you want to earn a profit at the end of the
4 year, and that price comes into play making sure that on a
5 gross basis you cover all your costs.

6 Regulation is quite different. The moment you start
7 talking about a cost -- and when I say cost, I'd like to
8 prefer that by saying a prudent cost, a cost that a
9 regulator would say is prudent, and you are allowed to
10 cover. The moment you put that on your books, that's a
11 price. That will be recovered as a rate. No question
12 about it. Once that's prudent, once you record it, it gets
13 recovered.

14 Vitol costs started off by being recorded in the LEAC,
15 and it was in the LEAC for a period of time. And WAPA
16 witnesses, Akeyla Christian, she testified that it was
17 removed from the LEAC at the suggestion -- a lot of the
18 commissioners wanted to leave the LEAC clean, just fuel
19 cost to the extent possible, everything else goes in the
20 base rates. So those costs were then taken. And in
21 February of '17 were put into base rates. So approximately
22 \$27 million of infrastructure costs and approximately
23 \$5 million of O&M costs, because at that time the O&M was
24 just an estimate.

25 HEARING EXAMINER: I'm sorry, when you say the

1 Vitol costs were put into the base rates, does that include
2 the amendments to the contract or just the original
3 contract?

4 MR. MADAN: It was -- no, it does not include
5 the amendments. The PSC at that time had only approved the
6 first contract, 87 million over five years.

7 HEARING EXAMINER: So the Vitol costs that
8 were put into the base rate in February 2017 were the costs
9 that were associated with the original contract only?

10 MR. MADAN: That's correct. But as a
11 footnote, just sort of interest, those Vitol costs over
12 five years is the same annual costs as the expanded
13 contract over ten years, not that much difference. It's
14 about 2.5, 2.7 million. So these costs that are being
15 amortized over five years, if WAPA gets approval of the
16 entire contract, that will simply be extended another five
17 years. It's the same annual number that's going into
18 rates. The first contract amortized over five years is the
19 same annual numbers as the full contract over ten years.

20 HEARING EXAMINER: Do you have a document or
21 anything that shows that breakdown?

22 MR. MADAN: I'm sure there are many. I don't
23 have one with me offhand, but I can -- I know that Larry
24 and Dan are listening in, and they can probably dig that
25 up.

1 HEARING EXAMINER: They can just break that
2 down into a document.

3 MR. MADAN: Yeah. And I'm sure WAPA has got
4 some of those calculations. We will work with them.

5 MR. SPREHN: We will check and provide.

6 HEARING EXAMINER: Just provide as a PSC
7 exhibit.

8 MR. MADAN: So that's the first issue in terms
9 of the PSC providing. I mean, looking at the surcharges is
10 not the right place to look anyway for Vitol costs. It's
11 in the base number, not in the surcharges that Mr. Kupfer
12 was reading from.

13 I'd like to talk about the overrun which is being the
14 subject of some discussion over the last couple of days.

15 HEARING EXAMINER: You think it's properly
16 characterized as an overrun?

17 MR. MADAN: I'm sorry?

18 HEARING EXAMINER: You think it's properly
19 characterized as an overrun?

20 MR. MADAN: Yes, I do.

21 HEARING EXAMINER: And why do you think so?

22 MR. MADAN: Because the initial contract and
23 the initial presentations to the PSC were basically made,
24 and the PR to the public and its customers were all made on
25 the basis of this is a \$87 million contract; it's going to

1 provide for 30 percent reduction in your bill, you know.
2 Propane as a diversification was something that was
3 discussed and brought up by staff as far back as maybe 2003
4 in the early discussions as to the --

5 HEARING EXAMINER: Brought up by PSC staff?

6 MR. MADAN: Yes.

7 And this went on for a long time, and then it started
8 to come to -- it started to come to a fruition. It was
9 provided and presented to the PSC in terms of the contract
10 saying here's a contract. Now, the contract did have some
11 gaps. I might as well put that in right now. This
12 Schedule L was presented as a blank schedule. And it took
13 a long time.

14 I mean, the commissioners -- that was a project budget
15 for an \$87 million project, and it went on and on through
16 various meetings with a couple of commissioners getting
17 quite focused on getting that information. It wasn't
18 provided. And then a short six line budget for an
19 \$87 million project was provided and said here's Schedule
20 L, and then there were different versions of Schedule L,
21 and they all went back and forth.

22 The contract does provide for changes, and it provides
23 for limited changes. And the process went through this
24 morning. I've got the particular sections, but they were
25 read to you this morning. It's Section 501 and Section 715

1 of the contract provides for these modifications.

2 And we were interested in asking WAPA to provide us a
3 road map of these changes. We went through various rounds
4 of discovery. We finally requested and received an
5 invitation to come down and speak with counsel. We came
6 down, we met with counsel, got his view of what he thought
7 the process was. We then met with WAPA in a trailer on
8 site, spent a couple of days going through the site, going
9 through various issues and started to talk about the
10 process that we wanted to see.

11 The process says that if there is a change and it's
12 unanticipated -- and that's been gone through. I wouldn't
13 repeat that. It's just a summary. -- that Vitol then has
14 the burden to indicate that that's a change and to present
15 that change to WAPA.

16 And so we had long discussions with WAPA saying that
17 what staff was interested in was getting a list of all the
18 projects, subprojects within the group, getting a start
19 point and end point, a starting budget and a requested
20 change by Vitol or WAPA. And then the other side has to we
21 said do some analysis to look at the prudence of that
22 change, document what analysis was done, how they decided
23 that that amount was reasonable. And then there wasn't
24 only one change; there were several changes in many of
25 these projects that went from the start to the finish.

1 And we requested they send that to us and provide that
2 information so we could make summary and present it to the
3 Commission. So we could look at and see the prudence. And
4 there are best business practices.

5 We were also concerned very much with the process. In
6 our view -- and this was not a detailed examination because
7 it start pretty quick, as we explained to you. That it
8 really should have been an arm's length project with the
9 best practice being that WAPA should have hired its own
10 construction manager that was savvy in the field of
11 construction of a project of this size. But it was more of
12 a collaborative arrangement. Vitol and WAPA were sharing
13 the same housing on site, all the documents were there, and
14 this was a collaborative effort, which a lot of it had --

15 HEARING EXAMINER: What do you mean sharing
16 the same housing?

17 MR. MADAN: Well, it was a trailer which had
18 all the documents, and Vitol people had to use that
19 trailer; WAPA people had to use it. Vitol had their own
20 arrangements as well, but this is a substantial project
21 where when a cost escalation is requested from Vitol, you
22 know, presumably WAPA would look at it at arm's length and
23 say what's the best position for us to take.

24 And there were many such examples of very substantial
25 increases. Not the docks. Not the docks. Cement. The

1 price of cement that's in that project, in addition to the
2 excavation at the site was very large. And WAPA's
3 explanation was that if we had used the local contractors,
4 which they did, we would have tied up the entire
5 Virgin Islands cement production for a couple of years.

6 And so the standard practice in business is you bring
7 a production capability to the site itself, which is a
8 standard production, but that was never done, never
9 explained. We didn't pursue it. But items like that were
10 done collaboratively to say we will just continue using it,
11 WAPA knows the local economy and then can guide this
12 particular thing and then accepted those escalations.

13 Now, whether the Commission wants to accept them,
14 somebody else wants to accept them, that's not up to us.
15 We bring up the issues and look at it. But what we were
16 looking for and what WAPA gave us then was, Akeyla is
17 right, a very large dump of data that was not organized in
18 any fashion that made it easy to understand, that made it
19 easy to review.

20 HEARING EXAMINER: How large was the
21 production?

22 MR. MADAN: The data? It was electronic and
23 hard copy and very large.

24 HEARING EXAMINER: Like how many gigabytes?
25 What was the size of the electronic --

1 MR. MADAN: I don't have that information. I
2 can get that for you.

3 HEARING EXAMINER: How many pages of hard
4 copy?

5 MR. MADAN: How many pages? Hundreds, maybe
6 thousands. I mean, a lot of -- if they were all printed
7 and if they were all executed, we got -- we took with us
8 maybe an example of one so that we could look at it, hoping
9 to get the data and be able to organize it. When we got
10 that, we called WAPA and said this is not what we accepted
11 or we thought we had agreed to. Obviously there was a
12 misunderstanding. We need you to give us a summary sheet
13 by project which shows the start, the end, all the
14 escalations, and then documentation of all the WAPA reviews
15 of every escalation from the start point to the end point
16 showing that you agreed to go from the start point to the
17 end point.

18 That was never provided, and that was a source of
19 contention basically asking us to do it, which would have
20 taken a huge amount of effort, very expensive and taken a
21 lot of time to do. That still remains outstanding.

22 HEARING EXAMINER: How are your expenses paid?
23 Are they paid ultimately by WAPA?

24 MR. MADAN: I'm sorry, I didn't hear that.

25 HEARING EXAMINER: Your expenses. What you

1 described as the data dump, for you to review that, you
2 would invoice the PSC for that?

3 MR. MADAN: That's right.

4 HEARING EXAMINER: Are those expenses then
5 passed on to WAPA?

6 MR. MADAN: Yes.

7 HEARING EXAMINER: Ultimately if you had
8 reviewed it, WAPA would have borne the cost of that
9 expense?

10 MR. MADAN: That's correct. That's right.
11 And it probably would have been a lot more cost efficient
12 if they had done that internally.

13 We asked the Commission for guidance --

14 HEARING EXAMINER: Did you review the
15 information that was provided?

16 MR. MADAN: Not in the kind of detail that a
17 review of that kind would have required. We didn't go
18 through and start organizing it. We just looked at it and
19 said, this is not the information that we had requested.

20 The PSC then, I believe, in an order, that we'd have
21 to research and get to you, required WAPA to do that kind
22 of analysis and present it. And it was one of our
23 discovery requests that was never honored, and that still
24 remains outstanding.

25 HEARING EXAMINER: Okay.

1 MR. MADAN: There was also an issue with
2 regard to the audit. And WAPA had the ability to require
3 an audit of the project. They undertook an initial audit,
4 and we got the scope. It was a very abbreviated scope, but
5 it went ahead. The audit came back, and that audit
6 initially --

7 HEARING EXAMINER: When did you receive the
8 initial audit?

9 MR. MADAN: When? I'd have to get that
10 information. Maybe tomorrow morning I can have that ready
11 for you.

12 That was done a few years ago, and done by the same
13 auditor that is doing the current audit that is due this
14 week. But in that initial audit, the point I'm trying to
15 make is that there was \$50 million that Vitol did not give
16 the auditor access to. So that became a bone of
17 contention. The Commission was upset about that as well
18 and required the audit to be done with the full.

19 And somehow WAPA has worked out with Vitol getting
20 access to that information. And we understand that that
21 information will be in the audit.

22 HEARING EXAMINER: Do you believe that your
23 review of the audit that is expected to be received
24 tomorrow, do you believe that your review of the audit
25 would be beneficial to what's being considered in the

1 current base rate case?

2 MR. MADAN: Yes, it would be. I think we --
3 we've indicated before that the scope of the audit is
4 important. We've requested, I believe, only informally of
5 WAPA to try and see if we can get a scope of that audit.
6 We have not been provided a scope of what the current audit
7 is. And as I described to you the process with regard to
8 the escalations, if the auditor is not reviewing that, our
9 own opinion is, ultimately the Commission will have to
10 decide, if there's not an appropriate review of what was
11 used to look at the escalations in the various -- and what
12 criteria was used where the WAPA used analysis to look at
13 alternatives each time they were presented with an
14 escalation or whether they just mutually decided this was
15 the best way to go, was it done orally, was it documented.
16 This is a big escalation. This is not a insignificant
17 escalation, from 87 to 160 million. That's a big number.

18 HEARING EXAMINER: Understood.

19 What would be the best way for you to review and
20 obtain any information you need to provide an opinion based
21 of the information contained in the audit? In other words,
22 are you able to do that with written questions to WAPA once
23 you've reviewed the audit? Would you need some sort of
24 oral communication with WAPA, a meeting or deposition? How
25 would you go about reviewing that audit and providing an

1 opinion?

2 MR. MADAN: I think the initial approach would
3 be to get the audit, to get the scope, look at what the
4 document says, and then decide what the best approach would
5 be. It seems that there are at least two things that need
6 to be looked at. One is the scope, and then the other is
7 to look at whether there is expertise required beyond just
8 looking at the numbers.

9 What we heard in the hearing the last two days is --
10 and I am not saying this is the only thing that's being
11 looked at. It's one of the things that should be and it's
12 important, were the dollars spent. That's important
13 clearly that the dollars were spent. Equally important is
14 were the dollars spent prudently; were the escalations
15 approved prudently; should the dollars have been spent.
16 Not the fact that they were simply spent, but were there
17 other ways where the cost of the project would not have
18 been as high as it was.

19 It's an interesting and important issue.
20 Representations are made that the cost of fuel was so high
21 and the effort was to get all of these savings to the
22 ratepayers. Well, those targets have been missed
23 substantially by years. The loss opportunity costs are
24 significant. May be equal to the cost of the project or
25 more in terms of the propane that could have been on line

1 and actually is on line.

2 There's propane on line in St. Croix. Those are all
3 leased units, not units that WAPA owns. There is propane
4 on St. Croix with the turbines. St. Croix is pretty well
5 set for propane. On St. Thomas prior to the Wartsilas
6 coming on, there was very little propane. The leased units
7 were supposed to run on propane. They were not converted.
8 They had a problem. Other units that are one or two units
9 that are capable of running propane til the Wartsila units
10 came on line.

11 And, yes, now there is 20 megawatts of new Wartsilas
12 running on propane, and that's provided a benefit. But
13 this was supposed to have been done in the LEAC. Two or
14 three years ago we were getting LEAC reports putting these
15 units on line as if they were in the LEAC, and it just had
16 no -- it's only recently 16 for St. Thomas and 17 for
17 St. Croix that these -- some of the propane has started to
18 flow, be on line and been paid for.

19 HEARING EXAMINER: Going back to the audit
20 though, in your opinion, or what do you believe would be
21 the options for you to review and get any additional
22 information that you believe you need to render an opinion
23 as to the prudence of the amendments to the Vitol contract?

24 MR. MADAN: Think the first thing to do would
25 be to receive it and review it. Our process is to

1 generally then review with Executive Director and legal
2 counsel and come up with an approach and get authorization
3 in terms of what that review should look like. In that
4 process the commissioners usually are brought up either at
5 a meeting, a discussion of the next steps going forward, a
6 report made to them as to what the issues are, if there are
7 options, what the options are, whether it be done at a
8 summary or a high level, which is what we would do. Or
9 you'd need some detailed construction expertise to look at
10 that report and say is this adequate. On the other hand,
11 would the Commission simply say they've looked at it, and
12 have had enough information.

13 This is really a Commission decision, I think. It's
14 an important decision, and we can look at it, present on a
15 high level what the issues are, but that's the way it's
16 usually done. And they have a very animated discussion,
17 bring WAPA into the PSC meeting. I think they listen to
18 all sides very carefully, and then they make a decision.

19 HEARING EXAMINER: Okay.

20 MR. MADAN: That's the best I think I can do
21 on the audit.

22 Finally on the audit, I just want to add one last
23 point, and then I am going to get to the last point in my
24 rebuttal. It's our understanding that the office of the
25 Inspector General of the Virgin Islands has commenced an

1 inspection of the contract between WAPA and Vitol for the
2 LPG conversion project.

3 HEARING EXAMINER: What is the source of that
4 information that there is an --

5 MR. MADAN: A letter that arrived to the
6 Executive Director yesterday from the Inspector General.

7 So that may be the highest level audit yet on this
8 project and probably worth waiting for, maybe.

9 HEARING EXAMINER: Even if it takes a year or
10 two?

11 MR. MADAN: Well, we'll see. I mean, it's
12 just a fact that it's obviously -- something has triggered
13 it. I have no idea what that is.

14 HEARING EXAMINER: An Inspector General
15 investigation can be triggered simply by someone filing a
16 complaint, right, so --

17 MR. MADAN: A lot of resources. Maybe or -- I
18 mean, unless it's a cursory review, I mean, this will take
19 a significant amount of resources to --

20 HEARING EXAMINER: The letter that was
21 received by the Executive Director, does it contain any
22 time line as to --

23 MR. MADAN: No.

24 HEARING EXAMINER: -- the completion of the
25 Inspector General's review?

1 MR. MADAN: No. It requested certain
2 information from the Executive Director.

3 MS. THOMAS-GRIFFITH: Can we see the letter?

4 HEARING EXAMINER: I'm not sure if we can.
5 I'm not sure if it's a public document, but we can discuss
6 that off.

7 MR. HALL: Just for clarity, are we talking
8 about the Executive Director of PSC or WAPA?

9 HEARING EXAMINER: I assumed it was the PSC.

10 MR. MADAN: PSC.

11 HEARING EXAMINER: We can discuss offline.
12 I'm not sure if it's a public document.

13 You can continue.

14 MR. MADAN: The other issue is one we have
15 touched on briefly, and I just want to close. That's the
16 issue of the link to future rate reductions. The link to
17 future rate reductions. This was clearly a very central
18 point in a lot of the presentations made to the PSC. And
19 the presentations seemed to go along the lines of keep
20 rates where they are, by December of this year you'll see a
21 reduction for Vitol that's now pushed into the middle of
22 next year, and by the end of next year, you will see a
23 further reduction that brings rates in total down by
24 10 cents almost, from 43 cents to 33 cents.

25 Here in this proceeding, as we listened to WAPA and

1 more specifically its consultants, they seem to say now
2 that these rates are good for one year and one year only,
3 and didn't get the feeling that there was any commitment to
4 these future rate reductions. The presentation, as was
5 made to the PSC, was all you get this done, you're not
6 going to see any future increases at all.

7 HEARING EXAMINER: Any future increases or
8 decreases?

9 MR. MADAN: Increases. They are all going to
10 be decreases. That's not at all clear. As a matter of
11 fact, the rate consultants are saying WAPA should have
12 asked for \$55 million. Very troubling. These rates are
13 already four times the national average. Very troubling.
14 So I just point that out and --

15 HEARING EXAMINER: What is your -- are you
16 familiar with the automatic rate adjustments that
17 Mr. Thomas had described during his testimony? Are you
18 familiar with how that works?

19 MR. MADAN: Yes, I am. And have been in
20 various proceedings where they tried them.

21 HEARING EXAMINER: Can you explain what your
22 experience is with those automatic rate adjustments?

23 MR. MADAN: Well, there are different types.
24 There is a rate adjustment of the type that Mr. Henry spoke
25 about, which is to say if you miss a projection, there will

1 be a true up, up and down. If those are done at all, they
2 need to be done very, very carefully, because the incentive
3 is very perverse. It simply says you can be inefficient,
4 stay where you are, loose sales, do whatever you want. As
5 you can see, the trend of sales over time has been
6 decreasing substantially for WAPA. There are various
7 reasons. Everybody has their opinion. High rates and
8 outages and services and all of that stuff. WAPA has been
9 trying to deal with them the best they can. But if you
10 simply have a true up that allows you to say I'm going to
11 get back the money I've lost because I wasn't as efficient
12 as I should have been, it's not the right answer, and we
13 don't believe it's correct.

14 Obviously, when you have a hurricane, you're going to
15 lose a substantial amount of load, and then it comes back.
16 But simply saying I am due getting back the load I had
17 before, it's just not a reasonable approach. WAPA's
18 enabling legislation says they will be regulated as if they
19 were a private utility, a private enterprise. You got to
20 work with the market. You got to look at what it takes.

21 Now, there are other mechanisms which we've been
22 involved with. One is in a territory in Guam where the
23 utility there was very interested in putting some kind of
24 incentive in terms of getting heat rates efficiencies of
25 the units, and saying if we operate -- you know, here is a

1 reasonable level. If we operate above it, let's share the
2 savings. That makes a lot of sense to us.

3 If something of that nature can be worked out in terms
4 of different metrics, and there are many metrics, those
5 kind of adjustments, automatic adjustments make a lot of
6 sense to us. But if the incentives are in the right way to
7 give the utility the ability to meet or exceed a goal,
8 those are good.

9 HEARING EXAMINER: Based on your experience
10 with automatic rate adjustments, could the refinancing of
11 the Vitol contract in the manner that WAPA is anticipating
12 to occur some time during the middle of 2020 trigger an
13 automatic rate adjustment?

14 MR. MADAN: I think --

15 HEARING EXAMINER: The reason I ask that is
16 because in Mr. -- I think it was Kupfer's testimony, he
17 ties the potential for decrease in rates to very specific
18 items.

19 MR. MADAN: Yes.

20 HEARING EXAMINER: One being the refinance of
21 the Vitol contract --

22 MR. MADAN: Yes.

23 HEARING EXAMINER: -- which is anticipated for
24 the middle of '22. So if that contract is refinanced in
25 the way that WAPA anticipates, could that trigger an

1 automatic downward rate adjustment?

2 MR. MADAN: Yeah. Actually, I took the filing
3 and all the presentations made to the PSC as doing exactly
4 that, that once that was done -- and I think Mr. Hall said
5 this morning that it's WAPA's intention to do that.
6 Actually, what would be more interesting would be to have
7 WAPA actually execute the contract. It seems to be a
8 little bit circular.

9 We're looking at it from the other way. If WAPA came
10 in and said, we've negotiated with Vitol, and here's the
11 deal, it would be even better if the PSC were at the table
12 looking at what's being negotiated, what the contracts are,
13 what some of the things that the PSC would be interested
14 in. Because we tried that in the original contract, this
15 15 percent rate of return. Remember that's an after tax
16 rate of return. Pre-tax, that's costing the ratepayer
17 30 percent. It's a huge, huge number, and that obviously
18 gives the incentive to try and renegotiate that rate.

19 But if you came back and said there are provisions
20 that don't have -- one of the things we asked is why is
21 there a provision for Virgin Islands taxes. That seems to
22 be relatively easy. Everybody at WAPA, the citizens, the
23 government, all want the rates to be low. Why tax the fuel
24 that's coming in on something that's giving everybody the
25 credit. Get that out of the contract. Get the ability to

1 prepay, or are we going to be stuck with another issue
2 which says, oh, no, one of the clauses in here is that you
3 can only prepay if a, b, c, and d.

4 So if they came with a contract which says here is a
5 provision and have the PSC look at it, I think the PSC at
6 that point can look at it and see that it's providing a
7 benefit and provide the rates immediately down, up,
8 whatever it is. This piece that's being negotiated now
9 saying it's the thing that's going to get us Vitol. It
10 will be a lot better if Vitol came in package, and say here
11 it is, give us the rate. I don't know why that couldn't
12 happen.

13 HEARING EXAMINER: The explanation from
14 Mr. Kupfer was that the base rate -- the proposed base rate
15 increase is necessary to give the investors confidence to
16 allow for the refinancing of the Vitol contract.

17 MR. MADAN: Right.

18 HEARING EXAMINER: So if we were to credit his
19 testimony, my question is -- which you may have already
20 answered, but I just want to make sure you answered it. If
21 we were to credit Mr. Kupfer's testimony that the increase
22 is needed for the investors to have confidence to allow for
23 refinancing, could the ultimate refinancing trigger an
24 automatic decrease in the base rate? In other words, could
25 the PSC working with its consultants then issue an

1 automatic adjustment?

2 MR. MADAN: I think the short answer is yes.
3 From everything I've heard, that's exactly what WAPA is
4 offering. And whether the specifics of the negotiation
5 change the number or not, I don't know. But everything
6 that we've heard sounds like that would happen.

7 HEARING EXAMINER: And then the second item
8 that would trigger a decrease, as explained by WAPA, would
9 be the generation projects that are being financed by FEMA
10 and HUD. So assuming that those projects are completed by
11 this timeline that WAPA is anticipating, in a manner that
12 would allow for improved generation, could that action or
13 activity trigger another rate adjustment, automatic rate
14 adjustment downward?

15 MR. MADAN: Most of that is automatic because
16 most of that is through the LEAC. It's from renewables
17 that Mr. Kupfer is talking about, and it's from the
18 addition of the four new Wartsilas. I don't know if that's
19 going to be on line by the end of 2020. It might be. If
20 they are, they will trigger much more efficient generation,
21 and they will be included in the LEAC at -- providing a
22 lower fuel cost. And that's how that piece of it will be.

23 The piece that's not in there are the APR leases,
24 which will be terminated, and those leases will require --
25 could require or could be done through an automatic,

1 because they're base rates.

2 HEARING EXAMINER: So any automatic adjustment
3 as a result of those federally funded projects would be in
4 the LEAC, not the base rate?

5 MR. MADAN: No, not all of it. Those
6 federally funded projects, you're right, will be -- the
7 benefit will be through the LEAC, that's correct, as I
8 understand it.

9 HEARING EXAMINER: So there wouldn't be an
10 automatic adjustment -- there could not be an automatic
11 adjustment of the base rate based on those projects?

12 MR. MADAN: It shouldn't require it, no,
13 because those costs go -- those savings go through the
14 LEAC. They go through the LEAC through the reduced fuel
15 costs, and those are automatic. And the APR piece of it
16 will require an automatic adjustment.

17 HEARING EXAMINER: So do you disagree with
18 Mr. Kupfer's contention that those federally funded
19 projects would create a further decrease?

20 I think, if I recall correctly, he testified that
21 there would be a 2 percent or 2 cent reduction or 1 cent
22 reduction as a result of the refinancing of Vitol, and then
23 an additional I think it was 6 cents reduction because of
24 the federally funded project.

25 MR. MADAN: Yes.

1 HEARING EXAMINER: That 6 cents is for the
2 LEAC and not the base rate?

3 MR. MADAN: A piece of it is LEAC, and the APR
4 is in base rate. In other words, 1.79 is the Vitol
5 refinancing reduction in the middle of next year. And when
6 the LEAC is done for January through June of '21, which is
7 when it will happen, the LEAC will go down based on the new
8 Wartsilas coming on line, and there should be a base rate
9 reduction for the lease costs being removed.

10 HEARING EXAMINER: Could that base rate
11 reduction be automatic --

12 MR. MADAN: Yes.

13 HEARING EXAMINER: -- as a result of --

14 MR. MADAN: Could be.

15 HEARING EXAMINER: Okay. Do you have any
16 further testimony that you wanted to give?

17 MR. SPREHN: I have no further questions.

18 I do note that one of the things that was discussed
19 was the previously prepared by Bert Smith & Company, an
20 audit on the Vitol. We have located a copy of that, and I
21 can make that available, if you would like.

22 HEARING EXAMINER: That would be great. I'd
23 like to mark that as -- I think we are up to -- what number
24 are you up to PSC exhibit?

25 MS. HENDRICKS: 31 was the Vitol contract.

1 MR. SPREHN: 32 should be our next.

2 HEARING EXAMINER: So 32 would be. Thank you.

3 (Schedule of Liquefied Petroleum Project
4 Facilities Infrastructure Costs Examination Report was
5 marked as PSC's Exhibit 32 for identification.)

6 MR. HALL: This is going to be? What's the
7 number this one going to be?

8 MR. SPREHN: PSC 32.

9 HEARING EXAMINER: For the benefit of members
10 of the public that I've seen walk in, we are still
11 conducting the Evidentiary Hearing. We are scheduled to
12 begin the Public Hearing at 5:30, and we will. The
13 Evidentiary Hearing of course is open to the public, so we
14 welcome you attending. We will continue with the
15 Evidentiary Hearing up until 5:30, unless we are finished
16 sooner.

17 If you are interested in testifying and want to sign
18 up now so that it's first come, first testify,
19 Ms. Hendricks, I'm sure, can circulate a sign-up sheet.

20 You may proceed, WAPA.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 MR. HALL: Mr. Madan, did you file written
24 testimony in response to the initial petition?

25 MR. MADAN: No, there's been no testimony in

1 this case.

2 MR. HALL: Did you file any in response to the
3 supplemental petition?

4 MR. MADAN: No.

5 HEARING EXAMINER: We can stipulate that the
6 consultants haven't filed any written testimony.

7 MR. MADAN: Thank you.

8 MR. HALL: Are you willing to stipulate to
9 that, PSC?

10 MR. SPREHN: Yes.

11 HEARING EXAMINER: So you can go to your next
12 question.

13 MR. HALL: Last question as to whether you
14 were aware there was an order that it be done?

15 MR. MADAN: An order that staff would file --

16 MR. HALL: That the Hearing Examiner ordered
17 that the PSC's testimony be filed by September 19th I
18 believe. Are you aware of that?

19 MR. MADAN: Yes, I read the Hearing Examiner's
20 schedule.

21 MR. HALL: You did read the scheduling order?

22 MR. MADAN: Yes, I read it.

23 MR. HALL: I asked these questions because you
24 fault WAPA for not having made the changes in the initial
25 petition that were subsequently made; is that right?

1 MR. MADAN: Yes.

2 MR. HALL: And the original petition had a lot
3 of capital improvements in it that were taken out. You
4 went through some other changes as well; correct?

5 MR. MADAN: It was one of the changes, right.

6 MR. HALL: And you say those changes could
7 have been made earlier?

8 MR. MADAN: I said I don't think any
9 information used to make the changes was not available at
10 the time that the original petition was filed.

11 MR. HALL: I thought I understood you said
12 they should have been made earlier?

13 MR. MADAN: Well --

14 MR. HALL: Just a yes or no. Am I wrong or
15 right?

16 MR. MADAN: No. No, I understand that,
17 Mr. Hall. Just let me answer.

18 Yes, they should have been made earlier, and it's
19 troubling that they weren't. If a cost can be reduced and
20 is reasonable under one scenario, it's hard to understand
21 why it's not reasonable under the original scenario.

22 MR. HALL: You don't think that in an effort
23 to reduce the adverse impact on the ratepayer that it makes
24 sense for the utility to try to reduce its request to
25 minimize the impact on customers?

1 MR. MADAN: I think the way to do it is not do
2 it in the first place. I mean, why would you increase a
3 cost or request that these costs be put in, and then say
4 we're doing a great deal by reducing it. You're not doing
5 anything special. If you could reduce, then reduce it
6 before you file.

7 MR. HALL: Well, aren't capital improvements
8 something that have to be done but can be done based on a
9 different time schedule?

10 MR. MADAN: Generally there is some
11 flexibility in capital projects, yes.

12 MR. HALL: Now, you say that the Authority
13 reduced its request for funding after it got a notice of
14 default; is that correct?

15 MR. MADAN: That was the sequence.

16 MR. HALL: And you were told that?

17 MR. MADAN: We were told that there was a
18 notice of default and WAPA is filing a amended petition to
19 reduce its request substantially.

20 MR. HALL: But you don't know when the
21 \$20 million was -- when the processing began to address the
22 Vitol overdue payments by the \$20 million? You don't know
23 whether that occurred before or after the default, do you?

24 MR. MADAN: I don't understand the question.

25 MR. HALL: Do you know when --

1 MR. MADAN: What do you mean -- let me just
2 ask for a clarification. What do you mean by the process
3 of addressing the \$20 million? I don't understand what
4 that means.

5 MR. HALL: Well, WAPA had accumulated a
6 significant debt for fuel to Vitol; correct?

7 MR. MADAN: Yes.

8 MR. HALL: And Vitol wanted payment?

9 HEARING EXAMINER: Yes.

10 MR. HALL: Do you know when WAPA began the
11 process of attempting to remunerate the indebtedness to
12 Vitol through a payment of \$20 million?

13 MR. SPREHN: If you know the answer.

14 MR. MADAN: I don't know.

15 MR. HALL: Thank you.

16 Now, I'm not sure I understood your testimony, but I
17 think I heard you say that once an expense is on the books,
18 it's got to be regulated in that year. Is that the essence
19 of what you were saying?

20 MR. MADAN: No. What I'm saying is accounting
21 is different when you're a private enterprise and subject
22 to GAAP and when you are a public utility, and you're
23 subject to the regulatory chart of accounts, whatever is
24 particularly being used for your utility.

25 What I'm saying is that when you have an expense and

1 you're a private enterprise, you record it as being an
2 expense. As a private company, you have every right to
3 price that into your product or not. With regulatory
4 accounting, the moment you have an expense and in paren is
5 just and reasonable or prudent, whatever words you want to
6 put around that, that's a reasonable expense for the
7 utility, that has to -- in a rate proceeding that gets
8 translated dollar for dollar into a price. There is no way
9 around it.

10 MR. HALL: Are you an accountant?

11 MR. MADAN: I'm sorry?

12 MR. HALL: Are you an accountant?

13 MR. MADAN: An accountant, yes. I'm not a
14 CPA.

15 MR. HALL: Do you practice accounting?

16 MR. MADAN: Again, what do you mean by
17 practice accounting?

18 MR. HALL: Do you represent utilities with
19 respect to regulatory accounting?

20 MR. MADAN: No, I don't represent utilities.
21 I represent Public Services Commissions; I represent public
22 advocates; I represent state governments; I represent
23 private intervenors. All in the course of investigating
24 rate proceedings, the heart of which, in the subject matter
25 I deal with, is accounting.

1 MR. HALL: Have you ever presented to the
2 Authority any accounting statements or principles that said
3 that they are foreclosed from seeking recovery of the cost
4 associated with the Vitol contract?

5 MR. MADAN: No, I don't believe I've provided
6 any testimony to the Commission on that issue.

7 MR. HALL: Well, you understand that the PSC
8 asked the Authority for an audit of the infrastructure
9 costs; correct?

10 MR. MADAN: I'm not sure about that. The PSC
11 has the Authority for an audit? I'd have to defer to
12 counsel on that.

13 MR. SPREHN: I'm not sure I understand your
14 question.

15 MR. HALL: Let me show you what's been marked
16 for identification as PSC Exhibit 32. Have you seen that
17 before?

18 HEARING EXAMINER: What is PSC Exhibit 32?
19 Can you refresh my memory?

20 MR. SPREHN: It's the recently provided copy
21 of the audit.

22 HEARING EXAMINER: Did I get that? Oh, yes, I
23 have it. Thank you.

24 MR. MADAN: I believe I have seen this before.

25 MR. HALL: Would you agree that PSC is

1 entitled to ask the Authority to provide that audit?

2 MR. MADAN: Yes. Sure.

3 MR. HALL: And entitled to do so before making
4 a decision as to whether those costs are appropriate?

5 MR. MADAN: Yes.

6 MR. HALL: Are you aware that the PSC has
7 asked for a further audit with respect to certain costs
8 that were not made available to the auditors who did the
9 initial audit?

10 MR. MADAN: Yes, I'm aware of that.

11 MR. HALL: Are you aware that in June of this
12 year that the Commission indicated that it wanted to see
13 that audit before making a decision in WAPA's petition for
14 a supplemental rate increase?

15 MR. MADAN: Again, I'm not sure exactly of the
16 connection between wanting to see the audit and talking
17 about a rate increase. I think the Commission is just not
18 -- I'd have to look at their particular instructions in the
19 motion.

20 MR. HALL: Were you here at the June 12th
21 meeting of the PSC?

22 MR. MADAN: I'm not sure. I'm here at most
23 meetings of the PSC.

24 MR. SPREHN: I am going to object to the
25 continuing of this. We already provided this afternoon the

1 actual transcript of that meeting with the exact record of
2 what was done in that meeting in a motion. So testing
3 Mr. Madan's recollection as to what happened when you have
4 the actual document seems to be --

5 HEARING EXAMINER: Are you leading up to
6 something, Attorney Hall?

7 MR. HALL: Yes, I am. I am leading up to
8 something exactly.

9 Mr. Madan, I'm trying to understand if you were aware
10 that the PSC wanted an audited --

11 HEARING EXAMINER: I'm going to allow him to
12 ask a few more questions on this.

13 MR. HALL: If you were aware that the PSC
14 wanted an audit with respect to the Vitol costs and you
15 didn't think that was appropriate, why didn't you say so at
16 the meeting?

17 HEARING EXAMINER: Did we establish -- I'm
18 sorry, did we establish that Mr. Madan was at the
19 June --

20 MR. MADAN: I'm sorry?

21 HEARING EXAMINER: -- 2019 meeting?

22 Were you at the June 2019 meeting?

23 MR. MADAN: I believe I was, because I recall
24 the subject matter. I'd have to look up and see whether I
25 was there, but I believe I was there.

1 And your question again is whether I should have
2 spoken up saying what?

3 MR. HALL: Can you read the question back to
4 him?

5 (A portion of the record was read.)

6 HEARING EXAMINER: Okay, and your objection
7 is?

8 MR. SPREHN: That mischaracterizes his prior
9 testimony. Mr. Madan did testify he thought it was
10 inappropriate to ask for an audit.

11 HEARING EXAMINER: I'm sorry, Mr. Madan
12 testify that what?

13 MR. SPREHN: He did not testify it was
14 inappropriate to ask for that information.

15 HEARING EXAMINER: That's true too, but then
16 we also don't know why the PSC asked for the audit. We
17 don't know if the PSC asked for the audit on advice of its
18 counsel. I don't know that --

19 What is the significance of whether Mr. Madan thought
20 -- what is the significance of whether Mr. Madan spoke up
21 or didn't speak up about his thoughts regarding the audit?

22 MR. HALL: Well, as I understand his testimony
23 to have said, the Vitol contract had costs that were not
24 allowed earlier, the ship had sailed on those costs. And
25 if that is the case, under his interpretation of regulatory

1 accounting, then why are we engaging in an audit? Why is
2 it even relevant?

3 HEARING EXAMINER: Mr. Madan, do you believe
4 that the audit that was requested by the PSC is relevant to
5 the base rate case?

6 MR. MADAN: Yes.

7 HEARING EXAMINER: Do you think it's helpful
8 to the PSC in making a determination on the base rate case?

9 MR. MADAN: Yes.

10 HEARING EXAMINER: Okay.

11 MR. HALL: And why is that?

12 MR. MADAN: Because at some point the WAPA is
13 requesting and the PSC is going to have to rule one way or
14 the other as to what the appropriate costs related to Vitol
15 should be with regard to inclusion in the rates.

16 HEARING EXAMINER: Hold on. How much more
17 cross-examination do you have?

18 MR. HALL: I have quite a bit more.

19 HEARING EXAMINER: You have more than minutes?

20 MR. HALL: Yes.

21 HEARING EXAMINER: What we are going to do is
22 we will recess here, and we will resume at 8:00 a.m. And
23 that way Mr. Kupfer can attend by phone.

24 Do you have more than an hour of cross-exam?

25 MR. HALL: No.

1 HEARING EXAMINER: We will recess the
2 Evidentiary Hearing, resume at 8:00 a.m.

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4 (Time noted 5:21 p.m.)
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CERTIFICATE OF REPORTER

I, Yvonne Samuel-Setorie, Registered Professional Reporter, do hereby certify that the above-named meeting was taken by me in machine shorthand and represents the official transcript of said meeting; and that said transcription is true and correct.

In witness whereof, I have hereunto subscribed my hand.


YVONNE SAMUEL-SETORIE, RPR